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Supreme Court, U.S.
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No. 90-

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

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Shahsultan Jaffer,

Petitioner,

vs.

Gilbert K. Granet, et. al.,
Judge Marvin Aspen, and
Robert F. Klimek, et. al., and
Judge Nicholas Bua,

Respondents

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"IN RE SHAHSULTAN JAFFER, PETITIONER",
PETITION ON WRIT OF PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND WRIT OF MANDAMUS TO UNITED STATES ATTORNEY GENERAL

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STATEMENT OF THE QUESTIONS PRESENTED

1. Do the courts have inherent power to violate constitutional and statutory mandates by appropriating benefits intended for all parties, for benefit of members of the bar instead, and then avoid accountability of their acts in conflict with this court's holding in INS v. Pangilman, 486 U.S. 875, 883 (1988):

"Courts of equity can no more disregard statutory and constitutional requirements than courts of law"?

2. Did the courts below, in dismissing the complaints, ex parte, prior to joinder of issue or any motion addressed to the complaints, and the district court ignoring its own earlier order, violate the constitution and the rule of law as practiced in our adversarial system and as held in Ranking v. Howard, 633 F.2d 844; Geisinger v. Vose, 352 F.Supp. 104:

"Ex parte conferences, hearings or orders denying rights, personal liberties or properties are unconstitutional, cannot be enforced, can be set aside..."?

3. Did the district courts below, acting in concert with respondents, commit any judicial impropriety, knowing of petitioner's counsel's "positive misconduct," impair the contract term and improperly relieve counsel of their attorney-client obligation, then sanctioning the client by barring her access to the court, in direct conflict with this Court's ruling in Link v. Wabash, 82 S.Ct. 1386:

"A fair system of justice should not have to penalize a plaintiff because an attorney, through neglect or any other reason, failed to appear when ordered"?

4. Did the courts below, in concert with respondents, by casting petitioner outside of the law's protection, extract her property, in violation of 18 USC 1951 (Hobbs Act) which defines extortion as:

"... the obtaining of property from another, with or without his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right"?

5. Did appellate court breach its duty of care to petitioner, as held by this court in Dairy Queen Inc. v. Wood, 369 U.S. 500 (1959), by refusing to grant extraordinary writ or other equitable relief to protect petitioner's constitutional rights, and then engage in improper fact finding, committing judicial impropriety by misstating the nature of the decision of the courts below?

6. Was petitioner, because of the courts' and respondents' exclusive control over the instrumentality causing the dismissal and partiality evidenced by the lower courts' orders, unlawfully denied invocation of the common law doctrine of res ipsa loquitur by the appellate court which then refused to disqualify itself in

violation of Judicial conduct statute, 28 USC 144, 455 and this court's holding in Pierson v. Ray, 386 U.S. 547?

7. Will this court uphold its ruling in Prout v. Starr, 188 U.S. 537-542-544 that:

"When such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject-matter of inquiry in a suit already pending in a federal court, the latter court, having first obtained jurisdiction over the subject-matter, has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed."

and uphold that the framers of the constitution contemplated that instrument as a rule for the government of the courts and legislature; or allow judiciary acts which are repugnant to the constitution and the statutory mandates, to become the law of the land?

8. Did the courts, controlling the bar, possessing "100 percent market power," violate antitrust law by communicating to

their target (public) "we will not do business until you do what we ask," coercing litigants and extracting large fees to access court through members of the bar, in direct conflict with this court's ruling in United States v. Mitchell, 445 U.S. 535, 538 (1980):

"Under the doctrine of separation of power, the courts are without jurisdiction to compel the government to act contrary to a statute, no matter what the context or circumstances";

as such acts are detrimental to the "market" and the public interest?

9. Is this court, in the compelling public interest, mandated to compel the U.S. Attorney General to bring a civil action on behalf of all nonlawyer litigants for violation of rights, as declared in 15 USC 15(c) that:

"Any attorney general of a state may bring a civil action in the name of such state as parens patriae on behalf of natural persons residing in such state . . . to secure monetary relief as provided in this section for injury sustained by such natural

persons to their life, liberty or property by reason of any violation of sections 1 to 7 of this title."?

10. Since courts are an "enterprise" under 18 USC Section 1962(c), do all of the alleged acts when taken together, form a pattern and continued or threat of continued acts of racketeering activities; does this court owe a duty to the public to compel indictment of respondents by the U.S. Attorney General under section 1962(d)?

11. Is the federal government liable, as "controlling persons" under vicarious liability, for negligent supervision of courts (courts being the entity controlling attorneys and the "bar," as government agency) as well as the officials; and thereby liable under the Federal Tort Claims Act for violating the constitution, statutes and other law of the land, as reaffirmed by this court in Ex Parte Young, 209 U.S. 123,

28 S.Ct. 441, that:

"It is simply an illegal act upon the part of a state official in attempting, by the use of the name of the state, to enforce a legislative enactment which is void because unconstitutional...such enactment comes into conflict with the superior authority of that Constitution, he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." In Re Iyers, 123 U.S. 443?

12. Does petitioner, as a private attorney general, since she has incurred substantial loss as a result of the courts' action/inaction, is threatened with continued irreparable harm, have standing to seek a writ of mandamus to compel the U.S. Attorney General to allow her to present facts concerning alleged criminal wrongdoing in the courts below, to a grand jury for their investigation, as provided under 18 USC 3332?

13. Should the public continue to pay for the operation of a legal forum from which

it is barred without either payment of excessive sums to government agency (bar), or a law degree for access thereto, and whose rights are knowingly and systematically violated by officers of the court sworn to uphold the constitution and the laws of the land?

PARTIES TO THE PROCEEDINGS

The parties before this Court are those set forth in the caption and in a footnote under the caption.

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IN THE
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Gilbert K. Granet, et. al.,
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"IN RE SHAHSULTAN JAFFER, PETITIONER",
PETITION ON WRIT OF PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND WRIT OF MANDAMUS TO THE UNITED STATES ATTORNEY GENERAL[2]

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Petitioner respectfully seeks this court's jurisdiction for issuance of a Writ of Prohibition to the United States Court of Appeals for the Seventh Circuit and Writ of

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[1] Civil Action 86-6014, 88-3223, 88-3269 and Civil Action 87-1122, 88-3223, 88-3300.

[2] Hon. Richard A. Posner, Hon. Joel M. Flaum, Hon. John L. Coffey, Hon. Walter J. Cummings, Hon. Michael S. Kanne, Circuit Judges and Hon. William J. Bauer, Chief Judge.

Mandamus to the United States Attorney General, to prevent courts below from violating the constitution, statutes, and other criminal and civil laws of the United States, as they have so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

The Writs will be in aid of this Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

OPINION BELOW

The decisions of the district courts in this matter are reproduced in the appendix to this petition at (A-1).

The decisions of the court of appeals are reproduced in the appendix to this petition at (A-29).

BASIS FOR JURISDICTION

1. This court has jurisdiction pursuant to 28 USC Sections 1254(1), 1651(a) and Rule 21, to review decisions of federal courts and court of appeals which are violative of the constitution, statutes, and the law of the land; petitioner should therefore be guaranteed access to the highest court in the land for a final determination.

2. Issues in this actions are of such imperative public importance to require immediate settlement in this court, as evidence presented in the instant actions

indicates there is a strong likelihood that such activities will be repeated as part of the courts' policy.

3. An extraordinary writ under the above section is appropriate where unlawful decisions of government officials frustrated and destroyed the integrity of the proceeding, and where a litigant is damaged and prejudiced in a way uncorrectable on appeal.

4. The acts of defendants are so inseparably intertwined with the judiciary that the courts must be deemed responsible for defendants. When private conduct becomes so pervaded by governmental involvement, it loses its character as such and invokes full panoply of constitutional protection.

CONSTITUTIONAL PROVISIONS, STATUTES, TREATIES, COURT RULES AND OTHER LAW OF THE LAND

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STATEMENT OF THE CASES

It is noteworthy at the outset to review some of the questions that these cases present:

Petitioner, seeking the law's protection of her property rights, after substantive constitutional violations by the lower courts and members of the bar, was penalized and cast outside the law's protection because she was not represented by a member of the bar to enforce those rights. As a federal proceeding, it was a discrimination by the federal government. Such discrimination is forbidden by the constitution.[3]

"It is not consistent with the public policy of the United States to permit federal courts in the Nation's capital to exercise general equitable powers to compel action denied the state courts where such state

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[3] Only by sifting facts and weighing circumstances can the nonobvious involvement of the federal government in private conduct be attributed in true significance to the instant actions.

action has been held to be violative of the guarantee of the equal protection of the laws. We cannot presume that the public policy of the United States manifests a lesser concern for the protection of such basic rights against discriminatory action of federal courts than against such action taken by the courts of the states." Hurd v. Hodge, 334 U.S. 24, 35-36

The above-captioned actions were commenced by petitioner, through her counsel, against the defendants and/or its predecessor, Maxitron Corporation.

CIVIL ACTION NO. 86 C-6014 (hereinafter "6014") - Shareholders derivative action commenced in April 1986, was based upon:

"Violations of Section 10(b) of the Securities Exchange Act of 1934 (the ("Exchange Act"), 15 USC Section J(b), Rule B-5 promulgated thereunder by the Securities and Exchange Commission (the "SEC"), Title IX of the Organized Crime Control Act of 1970, the Racketeering Influenced Corrupt Organizations Act (the "RICO ACT," 28 USC 1961 et seq., provisions of the Illinois Business Corporation Act, and principles of Illinois common law."

Serious wrongs were committed by the former directors and officers of Maxitron

Corporation and petitioner was the only remaining shareholder who was both disinterested in the wrongdoing and willing to assert her rights, the other derivative plaintiffs having chosen to sell their shares back to the corporation.[4]

Merits of the controversy concerning captioned actions have never been suspect. Defendants never served an answer denying any allegation and now they are barred either by "laches" or "unclean hands" from asserting any defense.

Unbeknownst to petitioner, Mr. Weinstock, her former counsel, had taken

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[4] In June 1986 two other derivative actions, Michael Fine v. Christopher Jenson, et. al. (No. 86 C 3695) and Patrick Rooney, et. al. (No. 86 C 4218), also arising out of the same set of circumstances, were filed in the same district court in Illinois. The shareholders in these actions, with court approval, were awarded compromise settlements of approximately $450,000, but petitioner was not given any notice of settlement, in violation of Fed. Prac. Rule 23.1.

no steps to retain local counsel. At all times he assured petitioner he would continue to handle her action, and in fact, did not.

Because of his failure to appear at a pretrial conference (before joinder of issue, or any motion addressed to the complaint), 6014 was dismissed on November 17, 1986, in an ex parte hearing. The court stated in the minutes that it "will reinstate this case if plaintiff indicates that she is serious about pursuing it," and defendants agreed: "We do not believe that Ms. Jaffer will be denied her day in court should she decide to refile in this court"; all without any notice to petitioner.

On December 23, 1987, petitioner retained the New York law firm of Abady & Jaffe, and entered into a written retainer agreement for prosecution of the actions, in consideration for a contingency fee of

33-1/3 percent of the total recovery and up to $10,000 costs incurred in the actions.

Abady & Jaffe filed a motion for reinstatement on February 18, 1987, three months after the dismissal. The minutes indicated that the action would be reinstated. The court, without justification, delayed acting on reinstatement of this serious matter for seven months, subjecting petitioner to unnecessary and burdensome depositions, costing $80,000 in attorney hours.[5]

CIVIL ACTION NO. 87-1122 (hereinafter "1122"), was necessitated because while the district court was preventing petitioner from proceeding in 6014, respondents were given time to liquidate Maxitron, diverting its

[5] Abady & Jaffe had stated to petitioner before they filed their motion to withdraw that as a small law firm, having already expended $80,000 in attorneys' hours lacked resources to continue these actions.

only asset, P.I.E. Nationwide, to themselves and to freeze out petitioner, a 10 percent shareholder, without making any payments to her upon liquidation.

Unbeknownst to petitioner, the court dismissed 1122 on September 24, 1987, for reasons best known to the court.[6]

Abady & Jaffe, realizing the court's obvious bias against petitioner and their own lack of resources or ability to fight the courts and the defendants, decided they could not proceed with the cases.[7]

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[6] In response to several written status inquiries, Abady & Jaffe informed petitioner on October 14, 1987, that Judge Nicholas Bua had dismissed 1122 on September 24, 1987, advising them that he will not proceed with this action until Judge Aspen makes his ruling in 6014; Judge Aspen's clerk had advised them that Judge Aspen was not going to reinstate 6014, and that all this was "routine" court procedure.

[7] Abady & Jaffe stated: if they confront the judge with an adverse ruling, win or lose, he will rule against them for the next thousand cases in his own courtroom

After the dismissal of 1122, Abady & Jaffe harassed, intimidated and coerced petitioner into signing release documents which were highly prejudicial and contrary to her interest, the apparent purpose to completely exonerate defendants from responsibility for their fraud in connection with the captioned actions so that Abady & Jaffe would not be required to prosecute them. Petitioner refused to sign those documents and demanded that Abady & Jaffe prosecute the captioned actions as originally undertaken.

The court in 6014, issued an order on October 26, 1987 (seven months after the motion to reinstate was filed) stating: "...if plaintiff is represented at that time by local counsel, the court will grant

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and in concert with other judges maybe in all other courts. They cannot prosecute a case which will alienate a judge.

plaintiff's motion to vacate."

Abady & Jaffe refused to prosecute the action and filed a motion for leave to withdraw in 6014. Petitioner retained the Chicago law firm of Griffin & Fadden, Ltd., to answer the motion and to assist petitioner in finding another law firm in Chicago to take over these actions.

In 6014, a brief in opposition was filed on March 3rd, and a hearing was set for March 18th, but a court order was issued on March 11, 1988, not only relieving petitioner's counsel from a contractual obligation (substantially impairing the contract), but also creating a lien on her case files (by taking under advisement their fee request).

The court's decision thus not only deprived petitioner of counsel in the middle of a complex litigation, but also separated

her from material documents and evidence in the control of a now adverse party, creating "a case within a case," impacting the outcome of the litigation.

In 1122, petitioner through local counsel, on July 6 and 29, 1988, filed two motions to extend time for reinstatement. No response was ever received from the court. (A-27, Falkof's affidavit)

After unsuccessful search by petitioner and local counsel for substitute counsel, petitioner moved, on September 6, 1988, in each action for leave to file pro se appearances and to reinstate the actions.

The docket sheet reflects that in 1122, the district court:

(a) without petitioner's knowledge, issued an order on August 22, 1988, permitting her counsel to withdraw <u>without any notice or hearing to petitioner</u>.

(b) On September 30, 1988, denied petitioner's motion to appear pro se and to reinstate the action on the ground "...why plaintiff did not seek leave to file her pro se appearance or that of substitute counsel promptly after withdrawal of Abady & Jaffe...," sanctioning petitioner for her counsel's "positive misconduct" in the dismissal of the action on September 24, 1987, ignoring the controlling rule in Link v. Wabash, supra;

In addition to being impermissible and totally unsupported by any authority, the order was totally lacking in due process. At this point the court was put on notice by a letter dated August 17, 1988, from Abady & Jaffe, advising it that although they were previously granted withdrawal, all court documents were still being forwarded to them as counsel of record (A-23), and petitioner

was not privy to anything which was occurring in the court.

The court further states, "This matter was called for status hearing on September 28, 1988, at 10:00 a.m. at which time defendants appeared by counsel but plaintiff did not appear." (A-6)

The reason for petitioner's absence at the hearing on September 28, 1988, was because she was specifically advised by the court clerk that it "wasn't necessary."

In 6014, Judge Aspen received a letter from respondents' counsel, David Olasov, with a copy of Judge Nicholas Bua's memorandum decision in 1122, which knowingly misstated the grounds for dismissal of 1122, and asked the court to rely on it as a direct precedent for dismissal of 6014, when there was neither the ground of dismissal as a precedent, nor any similarity of issues between the cases,

except for some common defendants.

In 6014, the district court, acceding to respondents' unsupported request, denied petitioner the right to appear and prosecute her case pro se and dismissed the action on October 7, 1988. The court supported the second dismissal by citing case law directly violative of constitutional and statutory mandates (28 USC 1654), stating that:

(i) "Respondents objected to her appearing pro se;

(ii) "A corporation cannot appear pro se,"

misinterpreting legislative defination as applied to "persons" in relation to "corporations" and knowingly disregarding the fact that the complaint was also filed by petitioner individually as well, petitioner being the only remaining shareholder of the corporation; and stated

(iii) "...attorneys, in addition to being advocates for their clients, are

officers of the court and, as such, subject to a court's control and subject to the standards of ability, responsibility, liability and accountability required of members of the bar, as officers of the court, by the Code of Professional Responsibility..."

The court also presumed that because petitioner was not an "officer of the court," she would create unusual burdens not only for the party she represents but for her adversaries and the court as well, and she should therefore be denied the protection of the laws.[8]

On November 4, 1988, petitioner filed in the appellate court notices of appeal, writs of mandamus and prohibition, petitions for review, and several subsequent motions to provide the court reasonable grounds for the following relief:

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[8] The courts' denial of petitioner's motions to appear pro se were made in violation of statute and with the use of case law violative of statute, and not with any legally cognizable or compelling authority.

(i) suspension of court rules to expedite decision in a serious matter requiring immediate intervention;

(ii) deposit of material documents in control of her former counsel in court, pending appeal or writ, to avoid their disappearance or destruction, and to avoid delay entailing hardship, inconvenience and extreme emotional distress;

(iii) two emergency motions for receivership to preserve the status quo between the parties, until final disposition;

(iv) a complaint for delay in the appellate court under 28 USC 372(c); and

(v) a motion for discovery.

The appellate court ignored the motions for a period of 11 months, and finally on October 18, 1989, denied all relief except "appeal," in total disregard of its duty of care owed to petitioner to maintain the

status quo during the pendency of appellate proceedings.[8]

The appellate court allowed respondents, while the appeal and/or writ was pending, to transfer the assets of Maxitron Corporation to third parties, dissipate its assets and relieve themselves of liability for their wrongdoing.

The appellate court, as a fact finder, knowingly misstated petitioner's pleadings and the actual facts of dismissal of the actions in the lower courts as for "want of prosecution" rather than that petitioner was unlawfully denied access to the court to prosecute her actions. (A-29, court order)

The actions of judges of the appellate

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[8] An appeal is not a plain, speedy and adequate remedy, when the court's decisions are calculated and repeatedly disregard controlling law, and where the court's actions have caused irremediable harm and are not correctable on appeal.

court created an atmosphere of judicial bias. Realizing that she would not be provided with an objective review, filed motions for recusal and discovery, which were summarily denied. The appellate court also frustrated petitioner's request for copies of the court records, claiming that minutes of ex parte conferences had disappeared, permitting an inference of a conspiracy of silence.

The court then issued several unconstitutional orders, demanding that petitioner prosecute her appeal in the dark, without suspension of circuit rule 2, material documents and evidence, and without any opportunity to know the evidence under the exclusive control of respondents and the courts, in express violation of rule of law as practiced in our adversarial system.

Because of the judges' and respondents' superior knowledge and control over the

evidence, petitioner invoked the common law doctrine of res ipsa loquitur, to order the district courts and defendants to turn over evidence within their sole and exclusive custody which were the instrumentality of the dismissals and in explanation thereof, which was summarily denied.

The appellate court, on respondents' counsel's urging, and in retaliation, threatened petitioner with sanctions for "future frivolous filings," when there was no foundation for such a claim, based on the matter before them.

The appellate court, in retaliation for petitioner's exercising her civil rights to invoke jurisdiction of this court and to moot her petition, issued several unconstitutional orders, coercing petitioner to file her brief and prosecute her appeal in their court or be dismissed "for failure to prosecute."

REASONS FOR GRANTING THE WRIT

This petition is for an extraordinary writ and equitable relief from unconstitutional and unlawful conduct of the lower courts. The courts' deliberate and willful misconduct is "connected with" their official oath and duty to act, and they connived with wrongdoers and breached their duty of care to the petitioner.

This court affirmed in J.I. Case Co. v. Borak, 377 U.S. 426 (1964) that:

> "An agent acting - albeit unconstitutionally - in the name of the United States possesses a far greater capacity for harm than an individual trespasser exercising no authority other than his own...federal court may use any remedy to make good the wrong done..."

Denial of due process and equal treatment raises issues and problems of peculiar public importance involving disregard of state or federal rights, thus satisfies all five guidelines for the

issuance of extraordinary writ or other equitable relief (A-61)

By the nature of judicial proceedings in a federal court in which litigant is alleging violation of federal laws, including conspiracy to defraud the United States and to obstruct justice, as alleged here, the presumptive privilege is overcome by the prima facie demonstration of need sufficiently compelling to warrant judicial examination because of the public importance of the issues presented and the need for their prompt resolution.

This court may and should take judicial notice of:

(i) the contents of the files improperly in control of petitioner's former counsel and the lower courts' files;

(ii) Fed. Rules Civ.Proc. 8(a), 54(c):

"A pleader need not allege a legal theory on which he relies; he is to be

granted any relief to which he is entitled even though he has not demanded it;" and

(iii) this court's holding on pro se pleadings:

"Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers. Haines v. Kerner, 92 S.Ct 594; Jenkins v. McKeithen, 395 U.S. 411 (1969); Puckett v. Cox, 456 F.2d 233."

ARGUMENT

POINT I

COURTS BELOW, IN CONCERT WITH RESPONDENTS, IN DENYING PETITIONER ACCESS TO COURT, VIOLATED 28 USC 1654 AND IGNORED BASIC FIRST, FIFTH AND 14TH AMENDMENT PRINCIPLES, PROHIBITING THE GOVERNMENT FROM DEPRIVING A PERSON OF VALUABLE BENEFITS BECAUSE OF, OR IN RETALIATION FOR, THE EXERCISE OF CIVIL RIGHTS

Principal issues presented by these consolidated cases are as follows:

(i) whether a federal law, namely 42 USC 1981 et seq., and 18 USC 241-242, prohibits conspiracies to deprive "any citizen in the free exercise or enjoyment of any right or privilege secured to him by the

Constitution or laws of the United States"; and

(ii) whether courts have inherent power to violate constitutional and statutory prohibitions, at will.[10]

A corollary to the "plain meaning" rule is that a court cannot read into a law something that the legislature did not include. The legislature is presumed to be acquainted with the rules of statutory construction when it frames the language of legislation it promulgates.

Here, the plain and clear meaning of the statutes are obvious:

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[10] There is an obvious "federal action" involved here because of the monopoly status conferred upon the bar, a government agency. Any denial of access to public facilities must withstand close scrutiny and be carefully circumscribed. "Invidious discrimination takes its own toll on the freedom to associate, and it is not subject to affirmative constitutional protection when it involves federal or state action." Norwood v. Harrison, 413 U.S. 470.

28 USC 1985; 18 USC 241: "If two or more persons conspire to injure, oppress, threaten, or intimidate...in the free exercise or enjoyment of any privilege so secured under the laws...

28 USC 1983; 18 USC 242: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any ..."[11]

28 USC 1654: "In all courts of the United States the "parties" may plead and conduct their own cases personally or by counsel . . ."

and section 1654 mandates the court to protect pro se litigants' rights:

"Implicit in right to self-representation is obligation on part of court to make reasonable allowances to protect pro se litigants..." Traguth v. Zuck, C.A. N.Y. 1983 710 F.2d 90.

Another corollary to the "plain meaning rule" is the principle of construction bearing the Latin term "expressio unius est exclusion alterius." In other words, express

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[11] The federal officials are liable directly under the constitution of the United States.

mention of one thing in a statute excludes any other thing.

"Where statutory language is unambiguous the court has no occasion to consider Congressional intent except as it is expressed in the statute." Land O'Lakes Inc. v. U.S., C.A. Minn. 1975, 514 F.2d 134, cert. denied, 96 S.Ct. 271, 423 U.S. 926, 46 L.Ed.2d 253, on remand 470 F.Supp. 238.

The right to self-representation derives principally from interests beyond ensuring that trial outcomes are fair; and reflects values of individual integrity, autonomy, and self-expression so fundamental and pervasive that they require reversal without regard to the facts or circumstances of the particular case.

The modus operandi of the courts below is clearly evidenced by the nature of the dismissal of actions while petitioner was represented by counsel who were relieved of their obligation to prosecute for reasons

best known to the courts,[12] and petitioner's statutory right to appear pro se was knowingly violated by casting petitioner outside the law's protection, frustrating the express will of Congress, as a result of which petitioner sustained substantial injury due to such unconstitutional act on part of the courts.[13]

As a result of the courts' nonfeasance, misfeasance and malfeasance, they are automatically divested of any appearance of being an impartial tribunal and any proceedings before such tribunal must be deemed a nullity.

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[12] Clients are forced by courts to leave the entire control of the litigation to their attorneys, and are totally unaware of the irresponsible, incompetent, vexatious and abusive manner in which their lawyers, in conjunction with judges, pursue their cases.

[13] Judicial prejudice is a denial of due process of law. Mayberry v. Penna, 91 S.Ct. 499.

The record on appeal reveals that the judiciary, in ex parte hearings, before joinder of issue or any motion addressing to the complaint, dismissed 1122 on September 24, 1987,[14] in conflict with appellate decision prohibiting ex parte hearings. See Ranking v. Howard; Geisinger v. Vose, supra.

If the dismissals were due to failures of petitioner's former counsel to appear at conferences, then respondents and the courts, for failing to report or to take judicial action on petitioner's counsel's "positive misconduct," are now guilty themselves of "affirmative misconduct," "judicial perjury," and joining and adopting the conspiracy as

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[14] Fed.Rules Civ.Proc. Rule 12(b), 28 USC. "In deciding a motion to dismiss, factual allegations in complaint are taken as true." Kugler v. Helfant, 421 U.S. 117, 95 S.Ct. 1524 reh. denied, 421 U.S. 1017, 95 S.Ct. 2425 (1975; Fine v. City of New York, 529 F.2d 70 (2nd Cir. 1975).

their own.

It is court's responsibility to make attorneys, licensed by the bar, aware of their affirmative duty to properly and responsibly conduct litigation which they commence or prosecute in the courts of this nation. It is unconstitutional for courts to punish public for misfeasance, nonfeasance or malfeasance of the bar and/or judiciary:

> ..."attorneys are officers of the court and are obligated to adhere to all disciplinary rules and to report incidents of which they have unprivileged knowledge involving potential violations of the disciplinary rules." Dunton v. County of Suffolk, 729 F.2d 903 (1984).[15]

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[15] "Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the rules of professional conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense." Model Code of Professional Conduct

Both courts relieved petitioner's counsel of their obligation to petitioner under the contract, converted the retainer contingency agreement to a fee-for-services agreement, creating a lien and depriving her of material case documents and evidence, then denied petitioner the protection of law and unjustly enriched respondents, in direct conflict with this Court's ruling in Link v. Wabash, supra.[16]

Such a blatant disrespect of the

Rule 8.3. (See, also Kingsland v. Dorsey, 338 U.S. 318.)

[16] United States Constitution prohibits legislature from enacting any law impairing the obligations of contracts. When a statute would alter the terms of a contract by imposing new conditions or duties that would defeat one of the essential terms of the contract there is an impairment. This prohibition applies to private contracts and contracts where the state is a party. Garrison v. New York, 88 U.S. 196; Evans-Snider-Buel Co. v. McFadden, 105 F.293, [C.C.A.Indian Territory, 1900] aff'd. 185 U.S. 505).

constitution by judiciary and respondents, and "abandonment of attorney-client relationship" cannot make petitioner responsible for consequences of her attorneys' action.

The district court in 6014, denied petitioner access to court because defendant "did not want her to appear pro se," and as a nonlawyer litigant, petitioner was not an "officer of the court" and therefore not under the court's "control." Additionally, the court knowingly misstated that a corporation cannot appear pro se (ignoring the fact that the complaint was also filed by petitioner individually), misinterpreting the legislative definition of "persons" as it applies to "corporations," similarly quoting

case law violative of statute;[17]

Willheim v. Murchison, 206 F.Supp. 733, also affirmed the parties' right to conduct their own cases pro se in stockholder's derivative actions, or in any other action, as provided in 28 USC 1654.

The district court further stated that:

"...attorneys, in addition to being advocates for their clients, are officers of the court and, as such, subject to a court's control..."[18]

The court's assurance that members of the bar were able, responsible, accountable,

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[17] In Santa Clara County v. Southern Pacific Railroad Company, 118 U.S. 394 (1886) this court declared that Corporations should have the same rights as a living person, and was entitled to the same protection of the 14th Amendment of the Constitution. States are no longer permitted to deprive a corporation of its life, liberty, or property, without due process of law.

[18] The suggestion that a pro se appearance would undermine the court's control is not only unlawful but also below its dignity, in view of the requirements of 28 USC 1654.

adding insult to injury, as petitioner was the "victim" of these "officers of the court" in the instant actions. But the courts, instead of exercising control over them and upholding the law, unlawfully cast petitioner outside the protection of law.

If the inference to be taken from the foregoing would permit a presumption that the pro se lacks the attorney's competence, reliability and accountability, this is not so.[19]

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[19] A survey of judges by U.S. News and World Report (May 11, 1981) revealed that "only 4% of lawyers are competent."

According to former Chief Justice Warren Earl Burger, 75 to 90 percent of American trial lawyers are incompetent or dishonest or both (Trial Lawyers' Guide, 1971, pp 108-9). Other judges supported him.

This court affirmed in Johnson v. Avery, 89 S.Ct. 747, that "there is room for the intelligent layman to practice law where law or lawyers cannot or will not handle the problem."

This court has held that irrebuttable presumptions are unconstitutional when they are "not necessarily or universally true in fact," when such a classification effectively denies individuals the right to be heard on the validity of the presumption as applied to them. Vlandis v. Kline, 412 U.S. 441 (1973); Cleveland Bd. of Educ. v. La-Fleur, 414 U.S. 632 (1974).

This court should take judicial notice that (a) simultaneously with the first dismissal, the unlawful delay by the court in reinstating the action, provided defendants sufficient time to liquidate Maxitron Corporation and transfer its assets to themselves, and (b) similarly, the second dismissal and the appellate court's

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Should ordinary citizens have any less rights than a convicted criminal to access to the legal forum their tax dollars support?

deliberate ignorance of petitioner's filings, provided defendants additional time to further transfer the assets to third parties, dissipate its assets and relieve themselves of liability for their wrongdoing, and permanently and by fraudulent means deprived petitioner of her interest in Maxitron.

The appellate court, in order to protect the judges and attorneys and to avoid embarrassment, abdicated its supervisory jurisdiction, first ignored the pleading, and then blocked petitioner in every effort to pursue full and fair opportunity of review, permitting an inference of a conspiracy of silence, denied writs of mandamus or prohibition or both to protect her constitutional rights; denied the suspension of court rules which would have permitted an expedited decision in a serious matter requiring immediate intervention to avoid

liquidation of the only assets of the corporation to third parties, then went on to deny petitioner access to material documents from her former counsel and to the courts' record pertaining to the ex parte proceedings in the trial courts, denying all relief except appeal, without any support in law or fact.[20]

Therefore, the only proceeding which the litigant could take to enforce her rights so far as that official is concerned, is one by mandamus, which would only be issued by a superior court on whom the duty of enforcement has been so imposed.

"Extraordinary relief in form of a writ of mandamus is proper when claims made by a litigant are not of a kind that could be

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[20] Destruction and concealment of court documents constitutes improper suppression of evidence and thus the influencing, destruction and impending of judicial proceedings, just as much as does the intimidation of witnesses, warranting the conviction under the statute. 18 USC 1503.

merged into any final judgment and thus be capable of correction on appeal. The actions complained of are not error involving improper exercise of discretion, but rather concerned actions were entirely outside permissible bounds of the trial courts' discretion." 28 USC 1651

The appellate court engaged in improper fact finding, by misstating petitioner's pleading and the nature of the dismissals in the lower courts as "for want of prosecution" rather than that petitioner was unlawfully denied access to the court to prosecute her actions as stated in the orders.[21]

Comparing the language of the district courts' orders of dismissal and the language substituted by the appellate court, their coverup of the statutory and constitutional

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[21] The rule of the Restatement of Torts upon misrepresentation of Law in 20 Cyc. 18 is that an expression of opinion by one having superior knowledge "may amount to an implied assertion that he knows facts which justify his opinion, and thus his statement may become actionable as a false statement of fact."

violations by the lower courts is obvious.

Silence can be an act of fraud. A representation is not confined to words or positive assertions; it may consist as well of deeds, acts, or artifices of a nature calculated to mislead another and thereby to allow the fraud-feasor to obtain an undue advantage over another. Such act is a "positive fraudulent concealment."

Misrepresentation may be found in statements which are literally true, but which create a false impression in the mind of the hearer; such rule is based upon the recognition that "a half truth is sometimes the worst kind of a lie."

The appellate court, at respondents' counsel's urging, threatened petitioner with sanctions for "future frivolous filings," when there was no evidence or adjudication that petitioner's past filings were

frivolous. Irrebuttable presumptions are held unconstitutional by this court. See, Vlandis and Cleveland, supra.

The appellate court's concerted refusal to grant relief, imposed an insuperable handicap upon the petitioner who could not obtain the information and thereby proof of what actually transpired in the courts below that caused the deprivation of her rights. Therefore, because of the courts and respondents' superior knowledge and their control over the evidence, petitioner invoked the common law doctrine of res ipsa loquitur, to order the district courts and defendants to turn over evidence within their sole and exclusive custody which were the instrumentality of the dismissal and explanation thereof. It was summarily

denied.[22]

As a rule of law, since the court holds a probable key to the solution, fairness demands that what the court may know, it should produce. If it appears that the court has not taken the trouble to find out what lies in its power, or if it evades explanation at a crucial point, or if evidence itself suggests mendacity, it has not destroyed the inference or the presumption and must submit to a summary judgment in favor of the party raising the

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[22] Because of a fiduciary relationship of courts to the public, cutting off petitioner from acquiring evidence on the other side to make a fair decision, would be tantamount to a falsehood, and lacking a full and fair opportunity to litigate the issue, as practiced in our adversarial system and affirmed by this court in United States v. Price, 383 U.S. 787 (1966): "The due process requirement of opportunity to know evidence on the other side and cutting off such an opportunity is a denial of due process." (See also Hickman v. Taylor, 329 U.S. 495, 507, 509)

doctrine. Krebs, v. Corrigan, (D.C.Ct. App. 1974) 321 A.2d 558, 561.

Viewed in this manner, the contention of the courts below is clear arrogance of power, by knowingly casting petitioner out of the protection of the laws, because she appeared pro se.

In the words of Justice Harlan (163 U.S. at 559):

"[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."

The arguments above demonstrate that the oppressively, maliciously and wantonly executed orders, in the name of the government, were entered to enforce judicial enactments which are void because they are unconstitutional and cannot stand. The

courts' orders are unconstitutional as written and as applied to petitioner and therefore such orders must be stricken as violative of the federal constitution. Accordingly, petitioner must be granted a mistrial of the entire proceeding which is tainted with judicial impropriety and perjury, and incapable of correction on appeal.

The law of restitution should be made available to allow the victim (petitioner) to recover any unjust enrichment obtained from the victim of duress.

It is inconceivable that anyone, including the courts below, could seriously question that petitioner had not been irreparably injured in her property, if her allegations are taken as true.

It would expose petitioner to direct substantial injury, in addition to the loss

of her illegally extracted property (value $10,000,000), to harass her with a multiplicity of suits and litigation in an endeavor to vindicate her federally protected rights, and a remedy to prevent this irreparable injury is within the jurisdiction of this court.[23]

POINT II

COURTS BELOW IGNORED RELEVANT LEGISLATION AND CONTROLLING SUPREME COURT CASE LAW, HOLDING THAT TREATING SIMILARLY SITUATED PARTIES DIFFERENTLY IS SUBJECT TO STRICT SCRUTINY

It is a cardinal principle of the constitution and this court that a court may not rule or act in such a way as to result in inconsistent treatment of similarly situated parties, and violations of substantive

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[23] If a court is not authorized to issue a writ of mandamus to such an officer, it must be because the law is unconstitutional, and therefore absolutely incapable of conferring the authority, and assigning the duties which its words purport to confer and assign." Marbury v. Madison, 1 Cranch 237, 2 L.Ed 60 (1803)

constitutional rights requires strict judicial review.

The acts of respondents are so inseparably intertwined with the judiciary that the courts must be deemed responsible for defendants. When the private conduct may become so pervaded by governmental involvement, it loses its character as such and invokes full panoply of constitutional protection.

This court in Pavelic & Leflore v. Marvel Entertainment Group, U.S.L.W. No. 88-791 ruled that:

"We give the Federal Rules of Civil Procedure their plain meaning, Walker v. Armco Steel Corp, 446 U.S. 740, 750, n.9 (1980), and generally with them as with a statute, "[w]hen we find the terms... unambiguous, judicial inquiry is complete." Rubin v. United States, 449 U.S. 424, 430 (1981).

Based on the pleadings, and the application of settled law, the petitioner

was entitled to her day in court.[24]

"Mandamus will lie where trial court is charged with unlawful use or abuse of the entire action or proceeding, as distinguished from unlawful procedure or error in the action or proceeding itself related to the proper purpose of the action or proceeding and where appellate proceeding is tainted with impropriety." 28 USC 1651

POINT III

COURTS BELOW, AT THE REQUEST OF RESPONDENTS, INVALIDATED THE CONSTITUTION AND DECLARED THAT THE ACT OF THE AGENTS OR OFFICIALS RATHER THAN THE ACT OF THE CONGRESS BE THE LAW OF THE LAND

The federal and state constitutions provide that "no person shall be...deprived of life, liberty or property without due process of law..." and Amendment I states:

"Congress shall make no law... prohibiting...the right of the people...to petition the Government for a redress of grievances."

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[24] The law is clear that government has no immunity from liability flowing from its constitutional violations and may not assert the good faith of its officer as a defense to such liability. See, Owen v. City of Independence, 445 U.S. 622, 650 (1980).

"Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is vested." Schechter Poultry Corp. v. United States, 276 U.S. 394 (1928).

Judge-made law is unconstitutional because the judiciary has usurped the legislative role and taken away petitioner's right to represent herself and given that right exclusively to members of the bar, resulting in multiplication, rather than amelioration, of social ills and injustice. Under the Constitution, only the legislature is permitted to take away a basic right, but it has to be replaced with some other benefit to nonrecipient of process, such as free competent legal counsel, to protect a party's constitutional rights.[25]

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[25] "18 U.S.C. section 245(b) imposes criminal penalties upon the willful use of force, threats or coercion by any person to interfere with federally protected rights. The statute also extends to other forms of overt discrimination concerning the lawfulness of discrimination directed against

The case is a controversial one because the judges and lawyers have probed the motives of the legislature in passing the law. The court does not have the right to second-guess the wisdom of the legislature, particularly when they are taking away fundamental rights of litigants solely motivated by self-interest to preserve and enhance their monopoly. It is anachronistic to apply judge-made law doctrine in self-interest. United States v. Mitchell, supra.

If the judiciary are able, by their unauthorized interpretation of law, to bar or deprive persons of their constitutional rights, the power of the Congress to make law, in effect, is transferred to the judiciary. If, for example, judges were displeased with the restriction imposed by

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a subclass within a regulated classification." Lau v. Nichols, 414 U.S. 563 (1974).

the statutory changes and sought to evade them, they could intentionally or erroneously interpret the statute and appropriate benefits intended for the public, for benefit of a special interest group, as alleged here, thereby frustrating congressional intent. See INS v. Pangilman, supra.[26]

POINT IV

COURTS BELOW, IN CONCERT WITH RESPONDENTS, VIOLATED THE FEDERAL CONSTITUTION BY TRANSFERRING RIGHT VESTED IN A PARTY TO THE MEMBERS OF THE BAR, SUBJECTING THEMSELVES AND THE BAR TO ANTITRUST LIABILITY (15 USC 15(c))

The legislative history reveals no congressional intent to prohibit nonlawyer litigants, individuals or corporations access to courts and the court's justification, therefore, requires close scrutiny; the "level of scrutiny" that would be used to review the court action is by carefully

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[26] The burden to demonstrate that Congress has expressly withdrawn the remdey to petitioner's class is on the respondents.

identifying the character of the federal interest in equality that is implicated by the court's discriminatory classification as stated in Mathew v. Lucas, 427 U.S. 495 (1976):

> "When a legitimate purpose for a statute appears in the legislative history or is implicit in the statutory scheme itself, a court has assurance that the legislature has made a conscious policy choice. Our democratic system requires that legislation intended to serve a discernable purpose receive the most respectful deference." Harris v. McRae, 448 U.S. 297 (1980); Mahr v. Roe, 432 U.S. 464 (1977).

Even if the Congress intended to give exclusive privilege or franchise to the bar, the federal and state constitutions prohibit the legislature from passing a private or local bill that would, inter alia, grant "any private corporation, association or individual any exclusive privilege, immunity or franchise whatever." (See Bill of Attainder, A-38)

A proof of a discriminatory pattern

creates a rebuttable presumption that individuals and corporations were denied access to courts, not for neutral reasons, but to bestow economic benefits to the members of the bar, controlling the legal forum, to preserve and enhance their monopoly power.[27]

State and federal officials, bar associations and private citizens (attorneys), as members of the bar, acting in concert, invading the constitutional rights and privileges of others, may be sued by the United States Attorney General, in the name of the government as parens patriae, on behalf of the natural persons for damages and

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[27] "A presumptive individual classification is that which disadvantages a 'suspect class', or that impinge upon the exercise of a 'fundamental right'. Raynolds v. Sims, 377 U.S. 533 (1964); Yick Wo v. Hopkins, 118 U.S. 356 (1886); McLaughlin v. Florida, 379 U.S. 184 (1964); Hirabayashi v. United States, 320 U.S. 81 (1943).

have permanent restraining orders placed against them, requiring them to sign consent decrees for civil rights and antitrust (Sherman and Clayton Acts) violations under 15 USC 15(c). (A-37)

POINT V

COURTS BELOW, IN CONCERT WITH RESPONDENTS, ACTING UNDER THE COLOR OF OFFICIAL RIGHT, EXTORTING PETITIONER'S PROPERTY, HAVE VIOLATED 18 USC 1951 (HOBBS ACT), DEPRIVING PETITIONER OF HER INTANGIBLE RIGHTS-- DEFRAUDING THE GOVERNMENT OF ITS RIGHT TO THE LOYAL, FAITHFUL, AND HONEST SERVICES OF ITS OFFICIALS AND EMPLOYEES

In the instant actions, judiciary have impinged upon the power of the legislature, in depriving petitioner of her federally protected rights, under the color of their official authority, interfering with her contract, denying her access to the court, dismissing her actions and extorting her property, unjustly enriching respondents.

The appellate court, in order to protect the judges and attorneys, abdicated its

supervisory jurisdiction, by joining and adopting the conspiracy as their own.

Under 18 USC 1951, it is enough for conviction that the judges, in concert with respondents, appeared to act under color of official rights and exercise overt coercion under judicial conspiracy to violate the Hobbs Act. Guilt is not predicated upon further finding; only that they perverted legal or statutory power of their public office. (A-54)

Lower courts' actions violate concepts contained in the body of law and general conspiracy statute which defines two distinct types of offenses: (1) conspiracies to commit violations of specific federal statutes, and (2) conspiracies to defraud the United States.

Conspiracy to defraud the United States includes "any conspiracy for the purpose of

impairing, obstructing, or defeating the lawful function of any department of government - it also means to interfere with or obstruct one of its lawful government functions by deceit, craft, or trickery, or at least by means that are dishonest."[28]

POINT VI

COURTS ARE AN "ENTERPRISE" WITHIN MEANING OF 18 USC 1962(C)(4); ALL OF THE AFORESAID ACTS AND/OR OMISSIONS, WHEN TAKEN TOGETHER, FORM A PART OF SOME COMMON SCHEME AND THREAT OF CONTINUED CRIMINAL ACTS AND RELATED ACTIVITIES, AND CAN PROPERLY BE ALLEGED AS A PATTERN OF RACKETEERING ACTIVITIES

The statute prohibits any person from using a "pattern" of specified criminal acts to conduct an "enterprise."[29]

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[28] The fraud need not be common law fraud. It may involve misrepresentation or use of any dishonest means as declared by this court in United States v. Birdshall, 233 U.S. 223, 34 S.Ct. 512, 58 L.Ed. 930 (1914).

[29] Courts have generally held that the acts need not benefit the enterprise. Government corruption cases often stress the respondents' position in the enterprise.

Evidence presented in the instant actions indicates that there is likelihood that such activities will be repeated as part of courts' policy, if not reviewed by this court immediately.

Respondents violating section 1962(c) are members of the bar (a government agency); and section 1962(c) prohibits "any person" receiving income from pattern of racketeering activity in which he "participated as a principal" from an enterprise; mandating this court to obtain jurisdiction, to the exclusion of all other courts, until its duty is fully performed, as affirmed by this court in Prout v. Starr, supra.

This court must compel the United States Attorney General to indict respondents with racketeering conspiracy under 18 USC 1962(d), antitrust and other criminal law violations, by improper use of their official authority,

in harassing, intimidating, coercing and extorting large fees from nonlawyer litigants to access court, with the sole purpose and effect to maintain prices and control of the judicial forum, depriving the public of their intangible rights - defrauding the government of its right to the loyal, faithful, and honest services of its officials and employees. (A-58)

POINT VII

COURTS BELOW AND RESPONDENTS ARE CHARGEABLE WITH KNOWLEDGE OF LAW AND ARE PERSONS OF SUPERIOR KNOWLEDGE; WITH THE GOVERNMENT, UNDER THE THEORY OF VICARIOUS LIABILITY, BOTH ARE LIABLE IN DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT, 28 USC 1346, 2679-2680

Courts below knowingly participated with respondents in issuing orders that deprived petitioner of her federally protected rights, and such acts of the officers are declared unconstitional by this court in Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, supra.

Lord Thomas Denman, Chief Justice of

England, stated that:

"A lawyer or a judge who participates in the preparation or execution of a bad warrant for ulterior purpose or wrongful motives loses all claim of privilege." Green v. Elgie, 5 Queen's Bench 99.

Under the statute, the government officials are not immune for violations of the constitution and the statutes of the United States. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388. (Federal Tort Claims Act, A-50)

CONCLUSION

The very essence of judicial duty, when a judge-made law is in opposition to the constitution and the legislative mandates, is to determine which of these conflicting rules governs the case; if both the law and the constitution apply to a particular case, as alleged here, the court must either decide that case in conformance with the law, disregarding the constitution, or in

conformance with the constitution, disregarding the law.

If this court is to regard the constitution - and the constitution is superior to any ordinary act of the legislature - and the judge-made law which violates both the constitution and the legislative act is a violation of both the constitution and the legislative mandate; therefore, this court must govern the case to which both applies and punish the violators of the law for disobeying the constitution and the mandate of the legislature.

If this court close their eyes on the constitution and the legislative mandates, it would subvert the very foundation of all written constitutions and the statutes. It would declare, that if the judiciary shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is

in reality effectual. It would be giving to the judiciary a legislative power and a practical and real omnipotence, in the same breath which professes to have three divisions of the government, restricting their powers within narrow limits. It is prescribing separation of powers and limits, and declaring that those limits may be passed at pleasure.[30]

Petitioner has suffered distinct and palpable injury and is subjected to additional irreparable injury as a result of putatively illegal conduct of respondents and the courts below, and must recover, and must count upon the constitutional characteristics as appears on the record, act of Congress,

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[30] When principles that are reflected in the constitution get corroded and disappear from the democracy for the system to work, ultimately it will be reflected throughout the system. The Constitution then becomes just a "paper guarantee without worth."

and the repeal of the judge-made laws.

WHEREFORE, for the reasons stated above, the petitioner seeks the following relief against respondents and the United States District Courts and Court of Appeals for the Seventh Circuit:

1. The issuance of a declaratory judgment, declaring the rights and other relations of all interested parties, and determining factual questions of existence of party's entitlement to remedies and judgment and to afford relief from uncertainty, insecurity and controversy giving rise to proceedings; to provide scope of remedies and declaration of constitutionality of governmental actions before further potentially compensable or noncompensable damages are sustained by the parties;

2. Injunction prohibiting the appellate court from proceeding any further with

instant actions until review by this court and grand jury investigation is completed, as declared by this court in Prout v. Starr, supra.

3. In the interests of justice and pursuant to 18 USC 3332, that a grand jury investigation be commenced for vindication of a policy that Congress considers of the highest priority and to advance public interest by providing a remedy necessary to achieve compliance with our constitution and statutory policies;

4. An order granting preliminary and permanent injunctive relief against the respondents and the courts below, enjoining them and their agents from enforcing unconstitutional law, from failing to uphold and defend the Constitution of the United States as it applies to this case and in any similarly situated cases, from taking away

significant life, liberty or property rights of any persons or parties or corporations with whom they may deal in the course of their tribunal activities.

6. An award of costs of all proceedings against the respondents, including all disbursements, deposition costs, attorneys' fees, if any, or a sum in lieu of attorneys' fees.

7. Any other orders that may, to this Court, be deemed just, proper and equitable in the circumstances.

Respectfully submitted,

Shahsultan Jaffer, Pro se
400 East 54th Street
New York, N.Y. 10022
Tel: (212) 753-9202

APPENDIX "A"

Shahsultan Jaffer,
Petitioner
vs.
Gilbert K. Granet, et. al.,
Judge Marvin Aspen, and
Robert F. Klimek, et. al., and
Judge Nicholas Bua,
Respondents

Civil Action 86-6014, 88-3223,
88-3269 and Civil Action 87-1122,
88-3223, 88-3300[1]
==========

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge: Hon. Nicholas Bua
Case Number: 87 C 1122
Case Title: Shahsultan Jaffer v. Robert F. Klimek, et al.

DOCKET ENTRY (Dated September 24, 1987):

Order cause dismissed without prejudice. Court retains jurisdiction to reinstate for three months.

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[1] United States Court of Appeals, Seventh Circuit: Hon. Richard A. Posner, Hon. Joel M. Flaum, Hon. John L. Coffey, Hon. Walter J. Cummings, Hon. Michael S. Kanne, Circuit Judges and Hon. William J. Bauer, Chief Judge.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge: Hon. Marvin Aspen

Case Number: 86 C 6014

Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.

DOCKET ENTRY (Dated March 11, 1988):

Plaintiff Shahsultan Jaffer's counsel, Abady & Jaffe, motion to withdraw is granted, local counsel Coffield, Ungaretti Harris & Slavin are also granted leave to withdraw. The motion for other relief, specifically, the request for a lien, is taken under advisement pending resolution on the merits of this action.

Plaintiff Shahsultan Jaffer is directed to secure new counsel and appear in this Court on April 12, 1988, at 9:30 a.m., with her new counsel. Jaffer's failure to appear with her counsel on that date will result in a dismissal of this case for failure to

prosecute. Status hearing set for March 18, 1988, is stricken.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Judge: Nicholas Bua

Magistrate: Lefkow

Case Number: 87 C 1122

Case Title: Shahsultan Jaffer v. Robert F. Klimek, et al.

DOCKET ENTRY (Dated September 30, 1988):

ENTER MEMORANDUM DECISION.

It is ordered that plaintiff's motion for leave to file her pro se appearance and to reinstate her case is denied. All matters relating to the referral of the above entitled cause, this cause is returned to Judge Bua for further proceedings.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 87 C 1122
Case Title: Shahsultan Jaffer v. Robert F. Klimek, et al.
Dated: September 30, 1987

MEMORANDUM DECISION

Joan H. Lefkow, Magistrate:

Plaintiff has moved for leave to file her pro se appearance and to reinstate her case. This motion follows denial of August 2, 1988 of plaintiff's motion to extend time beyond June 24, 1988 within which to reinstate her case. That motion was denied after the court had dismissed on September 25, 1987 (see, A-1) with leave to reinstate within 90 days, and had extended leave to reinstate twice thereafter to June 24, 1988. Defendants argue that the denial of the motion to reinstate effected dismissal on the merits under Rule 41(b), requiring that this motion comply with Rule 60 as a motion for relief from judgment.

This matter was called for status hearing on September 28, 1988 at 10:00 a.m., at which time defendants appeared by counsel but plaintiff did not appear.[2] Thus, the only statement on plaintiff's behalf on record here is an unsworn statement dated and filed September 7, 1988.[3] In this statement plaintiff contends that her relationship with her counsel, Abady & Jaffe, had dissolved - because of counsel's misdeeds, and they eventually withdrew (May 25, 1988).[4] Plaintiff makes no explanation why she did not seek

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[2] Petitioner was advised by the Court Clerk that it was not necessary for petitioner to be present at the hearing.

[3] "In deciding a motion to dismiss, factual allegations in complaint are taken as true." Fed.Rules Civ.Proc. Rule 12(b), 28 USC.

[4] Petitioner's motion nowhere states that "her relationship with her counsel, Abady & Jaffe, had dissolved - because of counsel's misdeeds, and they eventually withdrew (May 25, 1988)"!

leave to file her pro se appearance or that of substituted counsel promptly after withdrawal of Abady & Jaffe, although her last motion for extension of time to reinstate was based on a representation that new counsel would appear.[5]

These matters of record suggest that this motion should be treated as a motion for relief from judgment under Rule 60(b) which could be based, as presented here, only on the basis of excusable neglect (Rule 60(b)(1).[6] Plaintiff has had extensions of time since September 25, 1987 to prepare to prosecute her

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[5] The court knowingly committed judicial perjury, as petitioner never received notice from court or counsel of her counsel's withdrawal, and documents were still forwarded to them until after petitioner filed her motion to appear pro se and to reinstate the action. See letter of Abady & Jaffe p. A-21.

[6] Two 60(b) motions were made by petitioner pro se. They were ignored by the court because she was pro se. Now the court says: (a) She can't plead her case pro se; (b) she has to make a 60(b) motion; (c) she can't make the 60(b) motion pro se; therefore, (d) the case is dismissed!

claim and has not done so.[7] The court finds no facts in the plaintiff's statement or elsewhere that would indicate that her failure to go forward should be excused.[8]

It is ordered, therefore, that plaintiff's motion for leave to file her pro se appearance and to reinstate her case is denied.

Under rule 72(a), Fed.R.Civ.P., objections to this order must be filed with the district judge within ten days after its entry. Failure to object will constitute a

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[7] Petitioner did, in fact, retain local counsel, who was unable to locate a Chicago attorney willing to take the case. (P-13)

[8] The court, while petitioner was represented by counsel, in ex parte conferences, dismissed the complaint before joinder of issue or any motion addressed to the complaint, without any justification in law or fact; then issued an order on August 22, 1988, permitting petitioner's counsel's to withdraw, without any notice to the petitioner, putting petitioner on the defensive instead.

waiver of objections on appeal.

ENTER:

_____
Joan Humphrey Lefkow
United States Magistrate

(Footnotes are those of the petitioner)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 87 C 1122
Case Title: Shahsultan Jaffer v. Robert F. Klimek, et al.
Dated: September 30, 1988

Name of Judge: Nicholas Bua

DOCKET ENTRY (Dated October 19, 1988:

Plaintiff's objections to Magistrate Lefkow's order of September 30, 1988 are overruled, and that order is adopted as the order of this court. Plaintiff's motion to file pro se appearance and to reinstate her case is DENIED.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge or Magistrate:

Judge: Marvin Aspen

Magistrate: Rosemond

Case Number: 86 C 6014

Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.

DOCKET ENTRY: (Dated October 7, 1988)

Plaintiff's Motion for leave to file pro se appearance is denied. All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge for further proceedings.

UNITED STATES DISTR ICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 86 C 6014
Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.
Dated: October 07, 1987

O R D E R

Plaintiff's Motion For Leave to File Pro-Se Appearance was referred to the magistrate "for hearing, if necessary, and for ruling.[9] The motion is denied

Plaintiff Shahsultan Jaffer is a 5% shareholder of Maxitron Corporation.

Jaffer is a lay person, and not an attorney-at-law. She has filed a pro se stockholder's derivative action against the defendants.[10] In

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[9] September 7, 1988 Minute Order.

[10] Stockholder derivative suits are the invention of the courts of equity which came to the relief of the stockholder, who had no standing to bring a civil action at law against faithless directors and managers. Phillips v. Tobin, 548 F.2d 408, 411 (2nd Cir. 1976). Courts of equity allowed the stockholder to step into the corporation's shoes and

addition to suing derivatively, she sues on behalf of herself and all other shareholders similarly situated.[11] Although she does not so state, we presume that Jaffer sues derivatively for S.S.I. Investors, Ltd. and/or as an officer/director of S.S.I. Investors, Ltd. In any event, defendants object to Jaffer proceeding pro se on behalf of both corporations.6

Jaffer may not file a pro se action, derivative or otherwise, on behalf of S.S.I. Investors, Ltd. It is well-settled that corporations may not appear in court except through an attorney. Corporations are fictional legal persons, and cannot appear for

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to seek in its right the restitution the stockholder could not demand in his own. Id.

3 Case No. 86 Civ. 3005, Complaint, filed April 14, 1988, at 28, 29.

themselves personally.[12] They must appear through natural persons as their agents. Courts have determined that these agents should be attorneys admitted to practice. In addition to being advocates for their clients, attorneys are officers of the court and, as such, subject to a court's control.

This judicially-imposed rule that corporations be represented by practicing attorneys find its origins in the necessity of having legal proceedings conducted, according to the rules of law and practices of court, by those charged with the responsibility of legal knowledge and professional duty. Strong Delivery Ministry Association v. Board of Appeals of Cook County, 543 F.2d 32, 33 (7th Cir. 1976) citing, Heiskell v. Mozie, 65 U.S. App.D.C. 255, 82 F.2d 861, 863 (1936).

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[12] Phillips v. Tobin, 548 F. 2d 408, 411 (2d Cir. 1976).

The rule has survived attempts by corporations to circumvent it through procedural devices such as assigning corporate rights to a lay person to prosecute a corporation's claims. See, Heiskell, supra; Jones, supra; and Palazzo v. Gulf Oil Corporation, 764 F.2d 138 (11th Cir. 1985). Further, the rule attaches regardless of how close the association of the person seeking to represent the corporation is to the corporation. See, In re Las Colinas Development Corporation, 585 F.2d 7 (1st Cir. 1978), cert denied, 440 U.S. 931, 99 S.Ct. 1268, 59 L. Ed.2d 387 (1979) (pro se applicant, president and major stockholder of corporation); Jones, supra, (pro se applicant, sole stockholder and chief executive officer.)

Accordingly, we hold that even if Jaffer is the sole shareholder of S.S.I. Investors or the president of the corporation, she is

precluded, as a matter of law, from prosecuting the lawsuit pro se.

Jaffer may not file a pro se stockholder derivative action for Maxitron Corporation or S.S.I. Investors. As noted earlier, Jaffer is a lay person, and a 5% shareholder of Maxitron. She sues derivatively for Maxitron. Since a corporation may not appear except through an attorney, likewise the representative shareholder cannot appear without an attorney.[13]

The person prosecuting a stockholder derivative suit must be subject to the standards of ability, responsibility, liability and accountability required of members of the bar, as officers of the court, and by the Code of Professional

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[13] Phillips v. Tobin, 548 F.2d 408, 411 (2d Cir. 1976).

Responsibility.[14] Maxitron (as well as S.S.I. Investors), their respective shareholders, and the court are entitled to the protection afforded to those represented by members of the bar.[15] Courts have uniformly concluded that the "conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court ... In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities, e.g., to avoid litigating unfounded or vexatious claims." Jones v. Niagara Frontier Transportation Authority,

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[14] Phillips, 548 F.2d, at 413

[15] Id. at 414

722 F.2d 20, 22 (2nd Cir. 1983).[16]

Jaffer's factual circumstance is on all fours with the case of Phillips v. Tobin, 548 F.2d 408 (2d Cir. 1976). In Phillips, the plaintiff stockholder filed a derivative action against certain directors alleging securities violations. In reversing the district court's refusal to dismiss the action, the second circuit held that plaintiff

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[16] See also, Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738, 830, 6 Ed.204 (1824), Richdel, Inc. v. Sunspool Corp., 699 F.2d 1366 (Fed. Cir. 1983); Carr Enterprises, Inc. v. United States, 698 F.2d 952, 953 9th Cir. 1983); Southwest Express Co. v. ICC, supra, 670 F.2d at 55; In re Victor Publishers, Inc., 545 F.2d 285, 286 (1st Cir. 1976); Strong Delivery Ministry Association v. Board of Appeals of Cook County, 543 F.2d 32, 33-34 (7th Cir. 1976); In re Highly, 459 F.2d 554, 555 (9th Cir. 1972); United States v. 9.19 Acres of Land, 416 F.2d 1244, 1245 (6th Cir. 1969); Simbraw, Inc. v. United States, 367 F.2d 373, 374 (3d Cir. 1966); and American Airways Charters, Inc. v. Regan, 746 F.2d 865, 873 (D.C. Cir. 1989) at n. 14.

had no right to maintain the action pro se. The court agreed with defendants that a shareholder derivative suit was an invention of the courts of equity to provide relief to a stockholder against improper corporate management, a procedural device to enforce a corporate claim. Id., at 411. The court concluded that a shareholder suing on behalf of the corporation must do so through an attorney.

In the case at bar, plaintiff sues in a representative capacity on behalf of Maxitron Corporation as a 5% shareholder. This being the case, plaintiff is precluded as a matter of law from enforcing her claims absent representation by a licensed attorney.

Finally, defendants object to this Court entertaining the instant motion since this case has been dismissed twice, and no motion for reinstatement pursuant to F.R.Civ.P. 60

has been filed.

Since Jaffer may not proceed pro se, it stands to reason that she may not file a pro se Rule 60 motion. If such a motion is to be filed, a licensed and practicing attorney must do it. Jaffer's failure to file such a motion buttresses the perception of the courts that a lay person lacks the legal knowledge necessary to properly litigate a lawsuit. In any event, resolution of Rule 60 issues is best left to another day - particularly, since such a motion may never be filed.

Accordingly, it is adjudged, decreed and ordered as follows: Plaintiff's Motion For Leave To File Pro Se Appearance is denied.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, the parties must file their objection to the Order with the Honorable Marvin Aspen within 10 days after being served with a copy of the Order.

Failure to file objections within the specified time period waives the right to appeal the magistrate's order. Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538 (7th Cir. 1986).

Dated: October 7, 1988

W. Thomas Rosemond, Jr.
United States Magistrate

(Footnotes are those of the court)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 86 C 6014

Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.

DOCKET ENTRY:

Plaintiff's objection to Magistrate Rosemand's order of October 7, 1988, denying plaintiff's motion for leave to file pro se appearance, is overruled.

Dated: October 21, 1988

Name of Judge: Marvin E. Aspen

ABADY & JAFFE
500 Fifth Avenue
New York, N.Y. 10110

August 17, 1988

Hon. Nicholas Bua
United States District Judge
Northern District of Illinois
Chicago, IL 60604
Attn: Minute Clerk

RE: Jaffer v. Klimek et al. (87 C 1122)

Dear Sir/Madam:

With the court's permission, I and my colleague Richard Jaffe withdrew as counsel for plaintiff in the above-entitled action. However, at the time of our request I neglected to inform the Court that, in fact, two other attorneys connected with our firm, Samuel A. Abady and Frank R. Millo, also appeared in the action. Due to this oversight, at present they remain counsel of record and have been receiving the Court's

minute orders.[17]

I respectfully request on their behalf that an order be entered permitting them to withdraw as well.

Respectfully yours,

Matthew Dineen

cc: Shahsultan Jaffer
David Olasov, Esq.

(Footnotes are that of the petitioner)

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2 This letter proves beyond any reasonable doubt that the court was fully aware that petitioner had never received any of the court documents until she filed her motion to appear pro se and to reinstate her action.

EDWARD AND ANGELL
430 Park Avenue
New York, N.Y. 10022

October 6, 1988

FEDERAL EXPRESS
Hon. Marvin E. Aspen
United States District Court
Northern District of Ill.
Chicago, IL 60604

RE: Shahsultan Jaffer, etc., and S.S.I. Investors, Ltd. v. Gilbert K. Granet., et. al./Civil Action 86 C 6014

Dear Judge Aspen:

There is pending before Your Honor a motion by the plaintiff for leave to file a pro se appearance and to reinstate her case after its dismissal for non-prosecution. The court should be aware that the plaintiff, in a companion action pending before Judge Bua, made the same motion. Judge Bua referred the matter to Magistrate Lefkow, who by opinion dated September 30, 1988, denied plaintiff's motion. A copy of the memorandum decision is enclosed for your reference. This decision

is, of course, direct precedent for the disposition of the motion pending before Your Honor.

Respectfully yours,
David M. Olasov

Enclosure
cc: Ms. Shahsultan Jaffer

AFFIDAVIT OF BRADLEY B. FALKOF

COUNTY OF COOK)
)SS:
STATE OF ILLINOIS)

AFFIDAVIT

I, BRADLEY B. FALKOF, being duly sworn do hereby state under oath as follows:

1. I am an attorney licensed to practice law in the State of Illinois.

2. On July 6, 1988, I presented to the Court in Jaffer v. Klimek, et. al., Case No. 87 C 1122, filed in the United States District Court for the Northern District of Illinois, a Motion to Extend Time for Reinstatement.

3. On July 29, 1988, I filed with the Court a Statement in Support of Plaintiff's Motion to Extend Time for Reinstatement.

4. At no time did I receive a copy of the Court's Order stating that the Motion to Extend Time for Reinstatement had not been granted.

5. All matters contained herein are within my personal knowledge and I could so testify if called upon to do so.

BRADLEY B. FALKOF

Subscribed and Sworn to before me
this 27th day of October, 1988.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Case No. 88-3269 and 86-C-6014

Case Title: In the Matter of Shahsultan Jaffer, Petitioner

Docket Entry: October 18, 1989:

By: Richard A. Posner, Circuit Judge
John L. Coffey, Circuit Judge
Joel M. Flaum, Circuit Judge

This matter comes before the court for its consideration upon the "PETITION FOR A WRIT OF MANDAMUS" filed herein on November 23, 1988, by the pro se petitioner.

"In this Petition for writ of mandamus petitioner Jaffer claims that her constitutional rights were violated by the district court when it allowed her attorneys to withdraw and dismissed her complaint[18] (after granting several extensions of time)

[18] Petitioner's memoranda makes no such claim. Petitioner stated that her constitutional rights were violated when the court denied her access to the court and then dismissed her action for want of prosecution.

for want of prosecution. We observe that the propriety of the district court's actions would be examined by this court in appeal No. 88-3224. Accordingly,

IT IS ORDERED THAT THE ABOVE PETITION IS DENIED. See Kerr v. United States District Court, 426 U.S. 394, 402-03 (1976) (one of the conditions for entitlement to the extraordinary relief sought by a party desiring a writ is that they have no other adequate means of attaining the relief sought).[19]

IT IS FURTHER ORDERED that the motions filed in connection with this petition are DENIED as MOOT.

(Footnotes are those of the petitioner)

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[19] The case cited by the court was totally irrelevant to petitioner's case.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Case No. 88-3300 and 87-C-1122

Case Title: In the Matter of Shahsultan Jaffer, Petitioner

Docket Entry: October 18, 1989:

By: Richard A. Posner, Circuit Judge
John L. Coffey, Circuit Judge
Joel M. Flaum, Circuit Judge

This matter comes before the court for its consideration upon the "PETITION FOR A WRIT OF MANDAMUS" filed herein on November 23, 1988, by the pro se petitioner.

"In this Petition for writ of mandamus petitioner Jaffer claims that her constitutional rights were violated by the district court when it allowed her attorneys to withdraw and dismissed her complaint[20]

[20] Petitioner's memoranda did not make any such claim. Petitioner stated that her constitutional rights were violated by the district court when it dismissed the action, without any justification in law or fact, before the joinder of issue or any motion addressing to the complaint, while she was

(after granting several extensions of time) for want of prosecution. We observe that the propriety of the district court's actions would be examined by this court in appeal No. 88-3224. Accordingly,

IT IS ORDERED THAT THE ABOVE PETITION IS DENIED. See Kerr v. United States District Court, 426 U.S. 394, 402-03 (1976) (one of the conditions for entitlement to the extraordinary relief sought by a party desiring a writ is that they have no other adequate means of attaining the relief sought).[21]

IT IS FURTHER ORDERED that the motions

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represented by counsel in the district court, then allowed her counsel to withdraw, all without any notice to her, and then blaming petitioner for what actually transpired among the court, respondents, respondents' counsel and her former counsel, casting petitioner outside the protection of law.

[21] The case cited by the court was totally irrelevant to petitioner's case.

filed in connection with this petition are DENIED as MOOT.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Case No. 88-3269 and 86-C-6014
88-3224 and 87-C-1122

Case Title: Shahsultan Jaffer v. Gilbert K. Granet, et al., Marvin E. Aspen, Judge; and
Shahsultan Jaffer v. Robert Klimek, et al. and
Nicholas J. Bua, Judge

Docket Entry: February 6, 1990

By: William J. Bauer, Chief Judge
Walter J. Cummings, Circuit Judge
Michael S. Kanne, Circuit Judge

This matter comes before the court for its consideration upon the following documents:

1. "EMERGENCY MOTION FOR A WRIT OF MANDAMUS TO COMPEL UNITED STATES ATTORNEY TO PRESENT FACTS CONCERNING ALLEGED CRIMINAL WRONGDOING IN THE COURTS OF THE UNITED STATES" filed herein on January 24, 1990, by pro se appellant.

2. "MOTION TO HAVE COURT DISQUALIFY ITSELF AS REVIEW TRIBUNAL AS ITS IMPARTIALITY

MIGHT REASONABLY BE QUESTIONED" filed herein on January 19, 1990, by pro se appellant.

3. "CROSS-MOTION OF THE MAXITRON DEFENDANTS FOR SANCTIONS AND RELATED INJUNCTIVE RELIEF" filed herein on January 26, 1990, by counsel for defendants-appellees.

The relief requested in petitioner's EMERGENCY MOTION FOR A WRIT OF MANDAMUS TO COMPEL UNITED STATES ATTORNEY TO PRESENT FACTS CONCERNING ALLEGED CRIMINAL WRONGDOING IN THE COURTS OF THE UNITED STATES and the MOTION TO HAVE COURT DISQUALIFY ITSELF AS REVIEW TRIBUNAL AS ITS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED is inappropriate and unnecessary and is hereby DENIED.

While the relief requested in the CROSS-MOTION OF MAXITRON DEFENDANTS FOR SANCTIONS AND RELATED INJUNCTIVE RELIEF is also DENIED, the Motion is well taken. "Petitioner is hereby warned that future frivolous filings

may result in the imposition of sanctions against petitioner". While this court liberally construes pro se filings, such status does not allow one to submit repeated requests for relief which this court cannot grant. The merits of petitioner's underlying claims will be assessed when both sides complete briefing.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, COURT RULES AND OTHER RULE OF LAW, RELATING TO THE INSTANT ACTIONS

These are mentioned in the petition, however, they are further expanded in details in this appendix.

The Magna Carta, Article 40, June 15, 1215, "...justice delayed is justice denied."

In 1820 Thomas Jefferson wrote:

"I know no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion."

ANTITRUST ACTS - SHERMAN AND CLAYTON ACTS, 15 USC SECS. 1 AND 2, AND 14 AND 15

Courts are a major "enterprise," with the power of a trillion-dollar industry which is 100 percent monopolized by judges and attorneys, as members of the bar. The bar, a government agency's actual monopoly power violates antitrust law, providing public with a cause of civil action for damages, and

criminal proceeding for "per se violation" of Sherman Antitrust Act; 15 USC 1, 2.

"Government action immunity from antitrust liability is only applicable when the activities constitute the action of the legitimate government business in its sovereign capacity." Clayton Act, 15 USC 14, 15.

"Proof of consciously parallel business behavior is circumstantial evidence from which an agreement, tacit or express, can be inferred, for purposes of finding a combination or conspiracy in restraint of trade and actual monopoly power of the enterprise under the Sherman and Clayton Acts."

BILLS OF ATTAINDER

The Bill of Attainder clause has been treated as prohibition against all forms of legislative punishment of specific groups. Punishment is not limited to criminal sanctions but may be deprivation of any rights, civil or political (See Cummins v. Missouri, 71 U.S. [4 Wall.] 277) and may affect the life of individual, or may confiscate his property, or both (See Fletcher

v. Peck, 10 U.S. [6 Cranch] 87).

In United States v. Lovett, 328 U.S. 303, this court defined bills of attainder as:

"Legislative acts no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial."

"If burden is inflicted upon identified or easily identifiable persons without the benefits of any adversarial hearing, such legislative enactment is an unlawful bill of attainder." (See Selective Service System v. Minnesota Public Interest Research Group, 468 U.S. 841: see also, L. Tribe, American Constitutional Law 631-43 [2nd ed.1988])

CIVIL RIGHTS ACT,
42 USC 1983, 1985, 1986 AND 1988

"By enacting sections 1981, 1983 and 1985, Congress did not abrogate states' 11th Amendment immunity, but such immunity was expressly abrogated for violations of federal statutes..." Parents for Quality Educ. With Integration, Inc. v. Fort Wayne Community Schools Corp., N.D.Ind.1987, 662 F.Supp. 1475.

The underlying principle, vital to the rule of law, is assurance of judicial detachment and independence. Therefore, judges are prohibited from committing all

manner of errors, including departing from the rules of natural justice, proceeding with a suit in which he has interest, misconstruing substantive law and rejecting legal evidence. 42 USC 1983.

"Action under section 1986 of this title providing damage remedy against anyone who, having knowledge of civil rights conspiracy and having power to prevent or aid in preventing commission of such conspiracy, neglects or refuses to do so is available if there is claim under section 1985." Highfield Water Co. v. Public Service Commission, D.C.Md. 1980, 488 F.Supp. 1176.

Congressional power under the amendment may reach even further. In U.S. v. Guest, 383 U.S. 745 (1966), six justices stated in two concurring opinions that congress can punish "all conspiracies - with or without state action - that interfere with fourteenth amendment rights." The Guest opinions have been interpreted to authorize federal protection against private interference with the private exercise of constitutional rights.

"Government need not establish that there existed formal agreement to conspire; circumstantial evidence and reasonable inferences drawn therefrom concerning the relationship of the parties, their overt acts, and totality of their conduct may serve as proof. Proven conspirator is responsible for substantive offenses based upon overt acts of his fellow conspirators as long as those acts were done in furtherance or as natural consequence of the conspiracy.

The federal officials are liable directly under the constitution of the United States.

CODE OF ETHICS - CANONS

Lawyers and judges have a duty to report violations of the disciplinary rules, including violations of the rules that require competence and preparation in the performance of services. The lawyers and judges, in other words, are putative complainants and have an

ethical duty to complain under the Code, failure to report, itself constituting misconduct.

"Knowledge and acquaintance with fact or truth; Model Penal Code Sec. 2.202; 'Knowing Assumption of Risk.'"

Canon DR6-101 provides that "a lawyer should represent a client competently"... "Failing to Act Competently...

(A) Lawyer shall not:

"1. Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

"2. Handle a legal matter without preparation adequate in the circumstances.

"3. Neglect a legal matter entrusted to him.

and DR1-103 deals with "Disclosure of information to Authorities".

"Cooperating with recklessly dishonest individuals to enable them to carry on nefarious activities is ground for the removal of judicial officer." Kane v. Rudich, 256 AD 556, 10 NYS 2d 929.

Judicial immunity provision of the law is not for the protection or benefit of a

malicious or corrupt judge, but for the benefit of the public whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences. It is essential in all courts that judges administer the law without favor and without fear.

CONSPIRACY AGAINST RIGHTS
18 USC 241-242

SECTION 241: Conspiracy against rights of citizens -

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizens in the free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same..."

The "constructive intent," "knowing assumption of risk" and deliberate ignorance contrived with a conscious purpose to avoid learning the truth and knowing and wilful violation of the Conflict of Interest Law, refer to title 18 USC 241, which provides

criminal penalties for conspiring to hinder person from enjoying his constitutional rights or for depriving person under color of law of right protected by constitution and gives rise to civil action for damages.

SECTION 242: Deprivation of rights under color of law - This section imposes criminal sanctions on:

> "Whoever, under color of any law, statute, ordinance, regulation, or custom, deprives any 'inhabitant' of his or her civil rights applies to action of federal officer taken under color of federal law." U.S. v. Otherson, C.A.Cal.1980, 637 F.2d 1276, cert.denied 102 S.Ct. 149, 454 U.S. 840.

> "Dicta or holding in prosecutions under section 241 have identified these privileges of national citizenship, with concomitant federal power to protect them from private conduct and section 242 from governmental conduct." Civil Rights Act

CONSTITUTION AND AMENDMENTS

It is duty and obligation of the law to conform to a certain standard of conduct for the protection of others against unreasonable risk or harm.

Those serving as adjudicators must overcome a presumption of honesty and integrity, if the guarantee of due process is to be adequately implemented. Tribunal must not pursue consistency at the expense of the merits of individual cases.

When the fiduciary relationship exists between parties, the court must scrutinize with extreme vigilance and clear evidence that there was no fraud, mistake or undue influence and there must be clear proof of integrity and fairness in the court's ruling or any order thus obtained must be set aside or held as invalid as an unconscionable advantage and as detrimental to public interest.

THE SUBSTANTIVE RIGHT OF ACCESS TO COURTS:

In Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142, 28 S.Ct.34, 52 L.Ed. 143 (1907), the Supreme Court characterized this right of access in the

following terms:

(3,4) "The right to access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the constitution.

"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Statute."

Under Illinois law, the fiduciary relationship is created "where confidence is reposed on one side and resulting superiority and influence is found on the other." Under Illinois law, "civil conspiracy arises when two or more persons combine to accomplish by concerted action either a lawful purpose by unlawful means or an unlawful purpose by lawful means, and government officials are no

exception to this law."

"DUE PROCESS consideration mandates that findings of fact be made in a manner such that the parties are assured that: (i) each party will have an unabridged opportunity to cross-examine, to explain, to present rebuttal evidence, and to offer written or oral argument so that intelligent challenge by a party aggrieved and adequate judicial review are possible; and (ii) the decision is based on evidence in the record, uninfluenced by extralegal considerations." USC Const. Amends. 5 and 14.

"Due process clause requires that there be no vindictiveness against a party for having utilized its civil rights and that the party be free of apprehension that review judges will be motivated by retaliation, and thus in determining constitutionality of system which exposes a party to increased injury, relevant question is not whether actual retaliation motivation exists, but whether system poses realistic likelihood of vindictiveness." Id.

"Determination of whether procedures employed by judiciary violate due process requires determination of whether, under realistic appraisal of psychological tendencies and human weaknesses, circumstances alleged impose enough of risk of bias or prejudgment on part of one party, that practice must be forbidden if guarantee of due process is to be adequately implemented." Id.

"Due process is not offended when decision maker has simply taken a position, even in the public policy issue related to

dispute, but it is constitutionally unacceptable for decisionmaker to announce in advance his position on adjudicative facts." Id.

COURT'S RULES

"Three fundamental goals underlie rule mandating that federal rules shall be construed to secure just, speedy and inexpensive determination of every action: maintaining quality of justice, avoiding delay and improving efficiency of dispute resolution." Fed.Rules Civ.Proc. Rule 1, 28 USC. People of the State of Colo v. Carter, 678 F.Supp.1484 (1986).

"In deciding a motion to dismiss, factual allegations in complaint are taken as true." Fed.Rules Civ.Proc. Rule 12(b), 28 USC.

DISCRETION

"The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people." Const. Amend. 9 (1791)

Courts' power of discretion is not an arbitrary and despotic one to be exercised at pleasure of court or from passion, prejudice or personal hostility and belief; but court must exercise and regulate it by sound and just judicial discretion whereby the rights

and dignity of individuals may be as scrupulously guarded and maintained by the court as right and dignity of the bar and court itself.

"Willful intent to disregard law by those who are charged to enforce law would warrant removal from the office." Commission on Judicial Conduct.

ETHICS IN GOVERNMENT ACT
28 USC 591

"Essential role of the Government in the prosecution of criminal violations must of necessity preclude complaints by private citizens; in an appropriate case, court, sua sponte, must refer private citizen's complaint to the United States attorney." U.S. ex rel. Salvage v. Arnold, D.C.Pa. 1975, 403 F.Supp. 172.

Ethics in Government Act, 28 USC 591 et seq., "creates a duty on part of court to appoint 'a special prosecutor' as the court's own representative for presenting the pertinent details of the criminal wrongdoing of named defendants to grand jury for its consideration."

FEDERAL TORT CLAIM ACT, 28 USC
SECS. 1346, 2679 AND 2680

The common purpose of 1966 Amendment of Federal Tort Claims Act is of:

"... providing for more fair and equitable treatment of private individuals and claimants when they deal with the government or are involved in litigation with their government.

"The 1988 Amendment does not preclude an injured person from seeking injunctive or other appropriate equitable relief against either the United States, federal employees, or both." 28 USC 2679(b)(2) (1988)

"If under a State law a private individual could be held liable for violation of a federal regulation, the United States under the Federal Tort Claims Act is exposed to similar liability. Such a stringent result may flow from violation of a statute or from other extreme wrongdoing. The public has to be protected fairly from arbitrary, capricious, unfair or incorrect governmental decisions." Id.

"Violations of substantive and procedural laws guaranteed by the statutes and constitutions of the United States mandates compensation by the federal government and government officials for the damages sustained." Fed. Rules 12(h)(3), 28 USC; 28 USC 1346(a)(2); USC Const.Amends 4, 5, and 14.

Government decision cannot be shielded

from liability under discretionary function exception of Federal Tort Claims Act if decision maker is acting without actual authority; government official has no discretion to violate binding laws, regulations, or policies that define extent of his official powers, and employees acting beyond authority is not exercising the sort of discretion that discretionary function exception was enacted to protect.

Under the statute the government officials are not immune:

"(a) for violation of Constitution of the United States;

"(b) for violation of statutes of the United States;

and actions for damages against an individual are authorized as well as against the government." 28 USC 2679(b) 2(A) and (B).

"'Employee of the government' includes officers or employees of any federal agency, and persons acting on behalf of federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Definitions of 'Federal Agency' includes the executive departments, the judicial and the legislative branch."

GRAND JURY INVESTIGATION UNDER
18 USC 3332, 3324 AND 1504

Where Congress has enacted statutes, the exercise of judicial discretion is effectively precluded. The above section imposes a "plainly defined and peremptory duty" on the part of the court or on the part of the United States Attorney General to present complainant's information concerning the alleged wrongdoing of defendants, judges and attorneys to the grand jury.

18 USC 3332(a) creates:

"...a right in every person to have information known by them concerning organized crime to be presented to the grand jury. It provides two ways for this to occur - either the court may bring it to the grand jury's attention or a United States Attorney can."

Both the language of 18 USC 3332(a) and its legislative history indicate that:

Congress intended to remove the

prosecutor's or court's discretion in deciding whether to present information to the grand jury. They retain discretion with respect to how they act and what they recommend concerning that information.

"MANDATORY DUTY' - As used in statute rendering public entity liable for injury proximately caused by its breach of "mandatory duty," term "mandatory" refers to obligatory duty which governmental entity is required to perform, as opposed to permissive power which it may exercise or not, as it chooses." Edwards v. Steele, 1 Dist., 216 Cal.Rptr. 283, 285, 170 C.A.3d 676.

18 USC 3332(a) provides that:

"Litigants in pending civil suits have standing to seek writ of mandamus to compel the United States Attorney to present facts concerning alleged criminal wrongdoing of certain named defendants to grand jury.

"...any attorney appearing on behalf of United States before grand jury who receives information concerning alleged offense from any other person must, if requested by such other person, inform the grand jury of such alleged offense, the identity of the person who conveyed the information, and his own action or recommendation, creates a duty on part of United States Attorney that runs to litigants." Mandamus - 23 (1).

Section 3324 provides: "...that no person shall be deprived of opportunity to communicate to the foreman of a grand jury any information concerning any offense against the criminal laws of the United States alleged to have been committed within the district."

Section 1504 makes it: "...an offense for anyone to attempt to influence the action or decision of any grand jury upon any matter pending before it by a written communication."

HOBBS ACT - 18 USC 1951

While private persons may violate 18 USC 1951 only by use of fear, persons holding public office may violate statute either by use of fear or by wrongful taking under color of official right. United States v. Kenny (1972, CA3 NJ) 462 F.2d 1205, cert den 409 U.S. 914.

"While government is not required to prove that public official accused of extortion under color of official right demanded or directly solicited the benefits received, or that he offered a specific quid pro quo in exchange for benefits, the government must show that the power of public office was misused in such way as to induce the giving of benefits. U.S. v. O'Grady, C.A.N.Y.1984, 742 F.2d 682.

Conviction under Hobbs Act required proof of three elements: that defendant coerced victim to part with property; that coercion occurred through wrongful use of actual or threatened force, violence or fear or under color of official right; and that coercion

occurred in such a way as to affect adversely interstate commerce. U.S. v. De Parias, C.A.11 (Fla.) 1986, 805 F.2d 1447, cert. den. 107 S.Ct. 3189.

OATH OF THE OFFICE

Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803):

"The oath of the office, too, imposed by the legislatures, is completely demonstrative of the legislative opinion on this subject. It is in these words: 'I do solemnly swear that I will administer justice without respect of persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge all the duties incumbent on me as---according to the best of my abilities and understanding agreeable to the constitution of and the laws of the United States.'

"It is therefore apparent that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislatures. Why, otherwise does it direct judges to take an oath to support it?

"This oath certainly applied in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments and knowing the instruments, for violating what they swear to support!! If such be the real state of things, this is worse than solemn mockery to prescribe, or to take this oath, becomes equally a crime.

"It is not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank."

OBSTRUCTION OF JUSTICE
18 USC 1503 AND
CRIMINAL INVESTIGATION,
18 USC 1510 & 1511

Under Title 18 USC 1503:

"It is unlawful to endeavor to influence the court and obstruct and impede due administration of justice. An endeavor to exploit such relationship could be found 'corrupt.'"

"The endeavor to exploit power vested in government official is perceived to be corrupt and illegal. An effort to bring about a particular result of a court proceeding by concealment and misrepresentation of the actual facts the court is acting with knowledge of crime committed as opposed to giving innocent court decision and have endeavored corruptly undertaken to violate the oath of the office, constitution, statutes and rules of the court."

Under the above statute, "destruction and/or concealment of court documents results in the improper suppression of evidence and thus the influencing, destruction, and impending of judicial proceedings, just as much as does the intimidation of witnesses,

warranting the conviction." See U.S. v. Rasheed, 663 F.2d 843 (1981).

Under Title 18 USC 1510 & 1511

"Whoever knowingly uses intimidation, threats, harassment or corruptly prevents the communication by any person to a law enforcement officer or a grand jury of a federal offense shall be punished as provided under the statutes."

Elements of offense - "It is only necessary for defendant to have believed that a party might give information or evidence to federal officials or grand jury, and to have prevented that communication, to violate the statute governing obstruction of justice and criminal investigations."

PRECEDENTS

A mere fact that a precedent is long outstanding does not relieve court of its responsibility to determine its validity.

"Stare decisis is not an inexorable command for courts to follow if it is going to produce unjust results. Stare decisis was intended, not to effect a petrifying rigidity, but to assure the justice that flows from certainty and stability. If, instead, adherence to precedent offers not justice but unfairness---it loses its right to survive, and no principle constrains us to follow it." People v. Hobson, 39 N.Y. 2d 479, 384 N.Y.S.2d 419.

RACKETEER INFLUENCED ORGANIZATIONS
18 USC 1961

Under 18 USC 18 1961 - Racketeer Influenced Organizations - "Government units such as courts are 'enterprise' within meaning of subsec.(4) of this section.

The law is predominately used against legitimate business in claims alleging fraud and common law fraud actions.

The statute prohibits "any person, (including members of the bar), from using a 'pattern' of specified criminal acts to conduct an 'enterprise.'"

"No special RICO type of injury must be alleged or proved. If the defendants infiltrate a business or a market through a pattern of racketeering activities in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property the plaintiff has a claim under 1964(c)."

Pattern element is characterized as follows:

"(i) the racketeering acts be related to each other; (ii) they be part of some common scheme; and (iii) some sort of continuity between the acts or a threat of continuing criminal activities must be shown."

Conspiracy, violation of Conflict of Interest Law, constructive misconduct and concealment or falsification of records may properly be alleged as predicate acts of racketeering under this chapter when it involves any of the substantive offenses included within the definition of racketeering activities.

RES IPSA LOQUITUR (DOCTRINE)

Officers and public employees are presumed to have known the laws which are clearly established and if their conduct violates clearly established statutes or constitutional rights of which a reasonable person would have known, they are not shielded from liability for civil damages.

Negligence 12.12(10) "Under doctrine of res ipsa loquitur, inference of negligence casts on defendant burden of coming forward with explanation."

The doctrine of res ipsa Loquitur rule is that:

"The facts of the incident speaks for itself and constitutes a prima facie case which will permit an inference of negligence or wrongdoing."

"The impact of the doctrine is a rule of necessity, invoked under prescribed conditions, to compel defendants to come forward and explain their freedom from negligence or wrongdoing." Common Law Doctrine

28 USC 1651 - WRITS - (MANDAMUS AND PROHIBITION)

"Whether proceeding under All Writs Act or not, a court has no license to ignore requirement that it let parties and appellate court know why it acts and on what factual basis." 28 USC 1651, Fed. Rules Civ.Prac. 26(c), 52, 52(a), 65(d), USC

"Mandamus and/or prohibition be used to compel the performance of an act which the law commands as a duty resulting from office, trust or statute. In Mandamus the trial court is named as a party and if the litigant's right to issuance of writ is clear of both the constitutional and statutory provisions. Id.

"Where equitable relief is sought, court has power to frame appropriate and effective relief, ancillary to a proper order, under the All Writs Act." 28 USC 1651; Court (265).

"Appeal can be treated as Petition for Writ of Mandamus or any alternative Writs where party had no other adequate means of seeking relief, and party could suffer additional irremediable damage if forced to

wait until after trial to appeal for wrong committed by the hands of government officials." Id.

Five guidelines for issuance of extraordinary writ or other equitable relief:

"1. Litigant has no other adequate means to secure the relief desired.

"2. Litigant is damaged and prejudiced in a way not correctable on appeal.

"3. District and appellate courts' decisions and orders are clearly such an abuse of its discretion as to constitute usurpation of power.

"4. District and appellate courts' orders manifest a calculated and persistent disregard of constitution, statutes and federal rules and is clearly erroneous as a matter of fact and law.

"5. District and appellate courts' orders raise new and important issues of law of the first impression, 28 USC 1651, Fed. Proc. Rule 23."

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Case No. 88-3269 and 86-C-6014
88-3224 and 87-C-1122

Case Title: Shahsultan Jaffer v. Gilbert K. Granet, et. al. and Robert F. Klimek, et al.

Dated: August 7, 1990

By: Hon. William J. Bauer, Chief Judge

The court has repeatedly denied the varied relief sought in appellant's 'RESPONSE TO COURT RULE TO SHOW CAUSE AS TO WHY THIS APPEAL SHOULD NOT BE DISMISSED FOR LACK OF PROSECUTION PURSUANT TO CIRCUIT RULE 31(c)(2) OF JULY 11, 1990" which is the second response to this court's latest Rule to Show Cause. Appellant's failure to abide the court's July 11, 1990 order directing the filing of her consolidated opening brief by August 10, 1990 will result in the dismissal of her appeals for want of prosecution. See Circuit Rule 31(c)(2).

CURRENT STATUS

The petitioner's disparity to present and protect her interest compared with respondents' highly experienced trial counsel was inadequate from the beginning, but with the courts as advocate for adversary, her chances of a fair trial was futile.

The appellate court by distorting, omitting and obfuscating the real facts of the instant litigation made it clear to petitioner that it would be an improper and grossly deficient due process review of this very convoluted litigation - a feat probably unrivaled in the annals of jurisprudence history of this country, because the partial tribunal (interested party) making decision in its own favor. The action in this court is for redress of deliberate wrongdoing by all respondents and courts below in concert with

each other and now are protecting each other through a conspiracy of silence.

This court declared in In Re Murchison, 349 U.S. 133, that:

" [3-6] A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This court has said, however, that 'Every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' Tumey v. State of Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 444. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy that appearance of justice.'" Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13.

The appeal in the court below, if the documents and evidence were available, would be complex even for an experienced attorney-

at-law. Petitioner is not an attorney-at-law, was not present in any of the proceedings in the court below, and has been ordered by the appellate court to prosecute her appeal (not a proper remedy), without suspension of circuit rule 2, without the material documents and minutes of ex parte conferences which are in the exclusive control of the court, which the court alleges have "disappeared."

Mr. Chief Justice Burger delivering the opinion in United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090 (1974) stated that:

"But this presumptive privilege must be considered in light of our historic commitment to the rule of law. This is nowhere more profoundly manifest than in our view of that "the twofold aim [criminal justice] is that guilt shall not escape or innocence suffer." Berger v. United States, 295 U.S. at 88. We have elected to employ an adversary system of criminal justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and the

public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence needed either by the prosecution or by the defense.

"Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth.

"...,the allowance of the privilege to withhold evidence that is demonstrably relevant in a criminal trial would cut deeply into the guarantee of due process of law and gravely impair the basic function of the courts...Without access to specific facts a criminal prosecution may be totally frustrated...

"We conclude that when the ground for asserting privilege...material sought for use in a criminal trial...it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice."

The principle stated by this court is that:

"When a suitor shows a right to some relief the court grants the relief to which he is entitled unrestricted by the form of the proceedings brought by the aggrieved person and the court itself will turn the petition into one that seeks a different remedy."

Wilwording v. Swenson, 404 U.S. 249, 92 S.Ct. 407, 30 L.Ed.2d 418 (1971).

While the writ is discretionary, it is stated that a superior court will exercise its discretion and grant the writ if an inferior court is totally wanting in jurisdiction, or against a threatened invasion, by the state or federal government, of constitutional rights, since any action taken in such a case would be without authority and cause unnecessary expense and delay to the parties.

A court may be prohibited from acting in excess of its jurisdiction when it proceeds against the express prohibition of a statute or proceeds in a different manner than that prescribed by a relevant statute, fails to follow an appellate decision directly on point, makes ruling that is not authorized by statute, or grants to a party another remedy where an adequate and exclusive remedy to

obtain certain relief is provided by a statute.

Petitioner's civil rights to sue in the courts were impaired and her property was unlawfully exacted by fraudulent acts of respondents, her former counsel and the courts under the shield of federal authority. The courts not only failed to sanction respondents for their acts but accorded them full support by barring petitioner access to court to vindicate her rights in a judicial proceeding within its jurisdiction. Even if the federal official may not personally or directly benefit from the extorted property, it is evident that the federal official chose not to make that private action illegal.

The Bill of Rights restrains the action of the federal government and Section C includes, quite simply, the argument that government has "supported" the conduct of

private parties by approving it, regulating it, or providing financial support to it.

The question presented, therefore, is whether the refusal to any persons of the right to sue in a court, by a federal official, and the resultant extortion of his property is a right vindicable against that official under the laws of the United States and obliges this court to declare the rights of the respective parties, and not just because the federal official in question is cloaked with a robe should he be unaccountable for his "affirmative misconduct" against that citizen.

(2)

No. 90-365

Supreme Court, U.S.
FILED
SEP 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

SHAHSULTAN JAFFER,

Petitioner,

VS.

GILBERT GRANET, et al., JUDGE MARVIN ASPEN, ROBERT F. KLIMEK, et al. and JUDGE NICHOLAS BUA,

Respondents.

OPPOSITION TO PETITION ON WRIT OF PROHIBITION AND MANDAMUS

BRIEF FOR THE RESPONDENTS ROBERT F. KLIMEK, ROBERT L. RICHIARDI, KLIMEK & RICHIARDI LTD., MORTON L. HUFF, WARREN G. FOX, AND MAXITRON & CO. AS SUCCESSOR TO MAXITRON CORPORATION and R.P.N. ACQUISITION CORP.

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QUESTIONS PRESENTED

Whether this court has jurisdiction under 28 U.S.C. §1361 and/or 28 U.S.C. §1651 where petitioner has failed to perfect her appeals?

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is not officially reported and is reproduced in the Appendix, infra, page 20.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was entered on August 30, 1990. Petitioner's application on writ of prohibition and mandamus was apparently

first filed on April 19, 1990. The Jurisdiction of this Court, if it exists, rests on 28 U.S.C. §§1361 and 1651.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations are set forth in the Appendix, infra, page 19.

STATEMENT

Shahsultan Jaffer ("Jaffer" or "petitioner") was a 5% shareholder of Maxitron Corporation ("Maxitron")[1/]. In April 1986, Jaffer commenced a pro se stockholders' derivative action entitled Shahsultan Jaffer, individually and on behalf of Maxitron Corporation and S.S.I. Investors, Limited v. Gilbert K. Granet, et al.,[2/] 86 Civ. 6014 (Judge Marvin Aspen) ("Jaffer I")[3/]. In

---

[1/] Maxitron & Co., as successor to Maxitron, owns a majority of shares of PIE Nationwide, Inc.

[2/] The other defendants in Jaffer I were Christopher Jansen, Robert F. Klimek, Morton Huff, Robert L. Richiardi, David E. Babcock, Charles H. Bentzel, Maxitron Corp., Klimek & Richiardi, Ltd. and WSI Investors, Inc.

[3/] This action was originally commenced in the United States District Court for the Southern District of New York, and transferred on motion to the District of Illinois.

addition to suing derivatively in the right of Maxitron, Jaffer sued Maxitron directly for S.S.I. Investors, Ltd., a corporation in which Jaffer was also apparently a shareholder. Over the course of 2-1/2 years, Jaffer I was dismissed twice by the Court for failure to prosecute and on October 7, 1988, Jaffer's motion for leave to file a pro se appearance was denied by order of United States Magistrate W. Thomas Rosemond, Jr. dated October 7, 1988. The order of dismissal was subsequently sustained by Judge Aspen.

While Jaffer I was pending, on or about February 6, 1987, Jaffer commenced another action encaptioned Shahsultan Jaffer v. Robert F. Klimek,

et al., 86 Civ. 1122 (Judge Nicholas Bua) in the United States District Court for the Northern District of Illinois ("Jaffer II")[4/] alleging violation of Section 10(b) of the Securities and Exchange Act of 1934, Section 78(j), Rule 10b(5), Title 9 of the Organized Crime Act of 1970, the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 28 U.S.C. §1961 et seq., provisions of the Illinois Business Corporations Act and Illinois common law. Jaffer II was based on many of the same facts as Jaffer I.

Jaffer II was dismissed twice by the Court for failure to prosecute

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4/ The other defendants in Jaffer II were Robert L. Richiardi, Morton L. Huff, Peter A. Wasem, Warren G. Fox, Klimek & Richiardi, Ltd., R.P.N. Acquisition Corp., Maxitron & Co., and Maxitron Corporation.

and once again, Jaffer sought leave to file a pro se appearance. By order of United States Magistrate Joan Humphrey Lefkow dated September 30, 1988, Jaffer's motion for leave to file a pro se appearance and to reinstate her case was denied. By order of the Honorable Nicholas Bua dated October 19, 1988, Jaffer II was dismissed. Jaffer appealed in both cases[5/] and perfected her appeal in neither. Both actions, consolidated for appeal, were dismissed for failure to prosecute by order of the Court of Appeals for the Seventh Circuit dated August 30, 1990. See Appendix, infra, page 20.

Jaffer comes to this court ostensibly seeking a writ of prohibition

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5/ The appeals were consolidated as 88-3223 and 88-3224.

to the United States Court of Appeals for the Seventh Circuit prohibiting it from any further proceedings with respect to the consolidated appeals until a grand jury investigation can be had, and a writ of mandamus compelling the Attorney General to commence a grand jury investigation into the alleged criminal wrongdoing in the courts of the United States.

SUMMARY OF ARGUMENT

Petitioner comes to this Court seeking issuance of the extraordinary writs of prohibition against the Court of Appeals for the Seventh Circuit and mandamus to compel the Attorney General to commence a grand jury investigation into the alleged criminal wrongdoing in the courts of the United States. First,

this Court ought not accept jurisdiction of this action because petitioner failed to exhaust available remedies below. Second, whereas petitioner's appeals were dismissed by the Court of Appeals for failure to prosecute, and whereas this Court denied petitioner's application to stay lower court proceedings on June 28, 1990, petitioner's application for a writ of prohibition is moot, in addition to being improvidently sought.

Similarly, petitioner's application for a writ of mandamus is improvidently sought and should be denied because there is no basis in law for the relief requested.

ARGUMENT

POINT I

THE EXTRAORDINARY WRITS OF PROHIBITION AND MANDAMUS SHOULD NOT ISSUE WHERE PETITIONER HAS FAILED TO EXERCISE HER RIGHT OF APPEAL

A. Mandamus Will Not Lie To Compel Officials to Initiate Prosecutions

The Mandamus and Venue Act provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States to perform a duty owed to the plaintiff." 28 U.S.C. §1361.

> Historically, mandamus is an extraordinary remedial process awarded only in the exercise of sound judicial discretion. Before such a writ may issue, it must appear that the claim is clear and certain and the duty of the officer involved must be ministerial, plainly defined, and peremptory

> [citation omitted]. The duty sought to be exercised must be a positive command, and so plainly prescribed as to be free from doubt. Wilbur v. United States ex rel. Kadrie, 281 U.S. 206, 50 S.Ct. 320, 74 L.Ed. 809. Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364, 367 (10th Cir.), cert. denied, 87 S.Ct. 70, 385 U.S. 31 (1966). Because mandamus is an extraordinary remedy, it is a 'settled rule that the writ of mandamus may not be employed to secure the adjudication of a disputed right for which an ordinary suit affords a remedy equally adequate and complete.'

Vishnevsky v. United States, 581 F.2d 1249, 1254 (7th Cir. 1978). This limitation reflects the congressional policy that the judiciary should not interfere with the valid exercise of a delegated power, and that a writ of mandamus should not issue where its effect is to influence the exercise of discretion of an officer or employee of the United States. See, e.g., Smith v. United States, 333 F.2d 70, 72 (10th

Cir. 1964); Hourigan v. Carter, 478 F. Supp. 16 (D. Ill. 1979) (mandamus will not lie to compel attorney general to initiate prosecutions); Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364, (10th Cir.) cert. denied 87 S.Ct. 70, 385 U.S. 831 (1966) (where Congress stated that appropriated monies could be used for any purpose authorized by the tribal government and approved by the Secretary of the Interior, the actions of the Secretary of the Interior were discretionary, not ministerial and mandamus was inappropriate); Heckler v. Ringer, 104 S.Ct. 2013, 466 U.S. 602 (1984) (decision of Secretary of Health & Human Services as to whether a particular medical service is reasonable and necessary and thús eligible for reimbursement under medicare are

discretionary decisions, not subject to mandamus).

On the present facts, Jaffer has not established that initiation of a prosecution by the attorney general is a peremptory, ministerial and non-discretionary duty. Neither has Jaffer presented any authority that mandamus is appropriate to compel criminal prosecution. The weight of authority is to the contrary.

In Hourigan v. Carter, 478 F. Supp. 16, 17 (D. Ill. 1979), plaintiff brought an action against the President of the United States, the Secretary of Energy and the Attorney General to compel them to initiate prosecutions against certain oil distributors and suppliers who were alleged to have violated laws and regulations regarding the pricing of crude oil.

The Court stated:

> The prosecutor's possession of strong evidence does not in and of itself impose a duty to prosecute that can be enforced by mandamus.
>
> It is not blind obedience to precedent that leads this court to follow the rule that mandamus will lie only to compel ministerial acts, although the precedent is clear enough. See, e.g., Inmates v. Rockefeller, 477 F.2d 375 (2d Cir. 1973); Peek v. Mitchell, 419 F.2d 575 (6th Cir. 1970); Powell v. Katzenbach, 123 U.S.App.D.C. 250, 359 F.2d 234 (D.C. Cir. 1965), cert. denied, 384 U.S. 906, 86 S.Ct. 1341, 16 L.Ed.2d 359 (1966); Fleetwood v. Thompson, 358 F. Supp. 310 (N.D. Ill. 1972). Rather, it is adherence to fundamental concepts of due process and separation of powers that compel the courts to refrain from deciding what cases should be brought before them.

Hourigan v. Carter, 478 F. Supp. at 17. Accordingly, like the plaintiff in Hourigan v. Carter, supra, Jaffer has failed to demonstrate that mandamus is appropriate in these circumstances.

B. Petitioner's Request For The Issuance Of A Writ Of Prohibition Appears To Be Moot And In Any Event Prohibition Is Not A Substitute For Appeal.

Similarly, it is well established that "prohibition and injunction against judges are drastic and extraordinary remedies ... reserved for really extraordinary causes." Ex Parte Fahey, 332 U.S. 258, 67 S.Ct. 1558, 1559 (1947).

In Gottlieb v. Rubenstein, 252 F.2d 779 (6th Cir. 1958) the Court of Appeals for the Sixth Circuit stated:

> While this Court has authority in a mandamus proceeding to require a District Judge to make a ruling in a cause pending before him, we will not undertake by mandamus to direct him what ruling to make, particularly where the ruling is one which addresses itself to the discretion of the District Judge. Ex parte Park & Tilford, 245 U.S. 82, 85, 38 S.Ct. 15, 62 L.Ed. 164; Jewell

v. Davies, 6 Cir., 192 F.2d 670, 673.

The Court is of the opinion that the Writ of Mandamus is not to be used as a substitute for an appeal and that the circumstances in this case are not so exceptional as to justify a departure from the rule.[6/] Massey-Harris-Ferguson, Ltd. v. Boyd, 6 Cir., 242 F.2d 800, certiorari denied 355 U.S. 806, 78 S.Ct. 48, 2 L.Ed.2d 50; Walker v. Brooks, 6 Cir. 251 F.2d 555. See: United States ex rel. Kennedy v. Tyler, 269 U.S. 13, 19, 46 S.Ct. 1, 70 L.Ed. 138. [footnote by respondents]

6/ In Gottlieb v. Rubenstein, 252 F.2d 779 (6th Cir. 1958) the petitioner obtained a verdict for $12,500 by reason of injuries to her minor son. When the defendant moved for a new trial on the ground that the verdict was excessive, the district judge entered an order granting a new trial unless petitioner would remit $2,500. The petitioner sought a writ of mandamus on the grounds that the district judge abused his discretion in failing to follow settled law on the issue of damages, and improperly invaded the function of the jury. Petitioner claimed to be a widow with limited means and without adequate remedy by appeal.

Gottlieb v. Rubenstein, 252 F.2d 779, 780 (6th Cir. 1958). See also People ex rel. Tinkoff v. Campbell, 212 F.2d 785 (7th Cir. 1954) (writ of mandamus is not the appropriate remedy to compel a district judge to disqualify himself for alleged personal bias).

In Jaffer's case, she has simply failed to prosecute her cases or her appeals in an orderly or appropriate fashion. In addition, at this juncture, since this Court denied petitioner's application to stay lower court proceedings on June 28, 1990, and the Court of Appeals dismissed the consolidated appeals for failure to prosecute by order dated August 30, 1990, petitioner's request for issuance of a writ of prohibition appears to be moot. But even if petitioner's request is not moot, prohibition is

improvidently sought by her. The voluminous court files demonstrate that neither the District Court nor the Court of Appeals has failed to acknowledge jurisdiction of either Jaffer I or Jaffer II. Nor has either court failed to adjudicate issues properly brought before it during the past 3 1/2 years that Jaffer has unconscionably dragged respondents through the courts, apparently seeking to wear them down and to fritter away their resources in order to satisfy some personal vendetta. Jaffer, herself staunchly refuses to accept well-settled, applicable law, that non-lawyers may not represent corporations and may not bring actions pro se in representative capacities -- both steps Jaffer wanted to take in the District Court below.

While respondents certainly appreciate that wide latitude is given to pro se litigants, given limited resources and understanding of the processes of the law, even this latitude has its limits. Jaffer's seemingly endless series of wholly meritless motions in the District Court, Court of Appeals and now this Court has unfairly exacted enormous expense from respondents.

In addition, Jaffer has refused at every turn to properly prosecute either action or appeal by failing to retain counsel on a continuing basis, appear in court for conferences and file appropriate papers relative to the litigation only to proffer excuse after excuse as to why she had not appeared when commanded, not retained counsel or filed appropriate documents, and

ultimately, why she cannot be held accountable for her actions. After each episode, Jaffer is heard to repeatedly complain that her rights are being violated by a multitude of entities including respondents, the judiciary and the Attorney General.

CONCLUSION

For the reasons set forth above, respondents respectfully urge the Court to deny the relief requested by the petitioner in its entirety, and to award just damages and double costs to the appearing respondents.

Respectfully submitted,

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as Successor to Maxitron
Corporation and
R.P.N. Aquisition Corp.

September 28, 1990

APPENDIX

§1361. Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

§1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of court which has jurisdiction.

United States District
Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

August 30, 1990

Before

Hon. WILLIAM J. BAUER, Chief Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. FRANK H. EASTENBROOK,
Circuit Judge

SHAHSULTAN JAFFER, Plaintiff-Appellant	(Appeals from the (United States (District Court (for the Northern
Nos. 88-3223 and 88-3224 v	(District of (Illinois, Eastern (Division:
GILBERT K. GRANET, et al., Defendants-Appellees	(No. 86 C 6014 (Judge Marvin E. (Aspen (

Ms. Jaffer has persistently refused to obey the court's orders directing her to file her opening consolidted brief in these long pending consolidated appeals. She has been repeatedly warned that her continued refusal to file a brief would result in the dismissal of her appeals pursuant to Circuit Rule 31(c)(2). The fact that she is seeking some form of relief in the United States Supreme Court does not relieve her of her obligation to this court to prosecute her appeals. Under the circumstances,

IT IS NOW ORDERED that these appeals are hereby DISMISSED for want of prosecution under Circuit Rule 31(c)(2).

EDITOR'S NOTE

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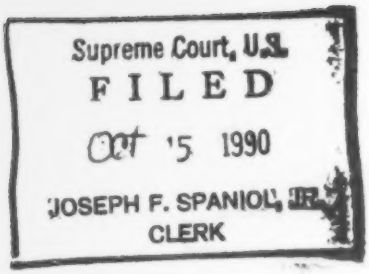

No. 90-365

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

Shahsultan Jaffer,

Petitioner,

vs.

Gilbert K. Granet, et. al.,
Judge Marvin Aspen, and
Robert F. Klimek, et. al., and
Judge Nicholas Bua,

Respondents

REPLY TO BRIEF IN OPPOSITION

"IN RE SHAHSULTAN JAFFER, PETITIONER",
PETITION ON WRIT OF PROHIBITION TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT AND WRIT OF MANDAMUS TO UNITED STATES
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REPLY STATEMENT

Respondents' Brief in Opposition, containing numerous misstatements of facts and law, and references to irrelevant cases, is nonresponsive and total fabrication of nonexistence facts in a futile effort to justify their "affirmative misconduct" in the courts below and filed in violation of ethical and court rules standards set forth by this Court. It must be stricken on the grounds that it is a "sham," and to be used as evidence of their continued misconduct. Respondents must be found in contempt of this Court for making false statement (see, A-4) and pursuant to Federal Rule of Civil Procedure 11, an "appropriate sanction," must be imposed upon respondents and their counsel, granting petitioner omnibus relief

under the Federal Tort Claim Act (see, A-3).[1]

Respondents neither explain their premise nor the logic of their conclusion. The only possible explanation for this assertion must be that either (i) respondents did not read the entire petition, or (ii) allegations made in the petition are indisputable. For had the respondents read the petition, they would have found--pages of detailed analysis justifying the relief.

This is a case requiring an application of the principle that governs the determination of the existence of "federal

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[1] "Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it. When they pass limit of their authority, so far at any rate that their action exceeds honest error of judgment and amounts to abuse of their office and its function...For their sworn oath and their first duty are to uphold the Constitution...This applies to all the cases require to be decided on the question of criminal intent." Screws v. United States, 325 U.S. 91.

action." An effort by the federal government, through judicare act, to authorize, encourage, or otherwise support discrimination in a particular facet of life constitutes illegal federal involvement in those pertinent private act of discrimination that subsequently occurred.[2]

This court may and should take judicial notice of the following rebuttal statement:

Petitioner was a 5% shareholder of Maxitron Corporation. However, other derivative shareholders, with court approval, were awarded compromise settlements by selling back their shares to the corporation,

---

[2] The evidence is more than convincing that the federal officials willfully, or at least with wanton disregard of the consequences violated a plain constitutional right of a citizen. The significant question, rather, is whether law enforcement officers shall be allowed to violate with impunity the clear constitutional rights of the inarticulate and the friendless.

making petitioner a 10% shareholder of Maxitron Corporation (see, Pet. p.9).

Stockholder's derivative action was commenced through counsel and not pro se, as stated by respondents (see, Pet. A-1, and A-23), otherwise there would have been no need for petitioner to seek the leave from the courts below to file a pro se appearance. The docket entries in the United States District Court for the Northern District of Illinois shows the following names appearance as attorneys for plaintiff: "Israel Weinstock, Kevin Flynn, Richard A. Jaffe, Matthew G. Dineen and Robert Chapman."

Jaffer II was dismissed once only by the court, before joinder of issue (see, Pet. p.A-1), without any support in law or fact, without any notice and while petitioner was represented by counsel.

Jaffer I was shareholders derivative

action and Jaffer II was freeze out of minority shareholder, individually; both filed by counsel (see, Pet. pp. 8, 11). The reason for the dismissal of this action is unknown to petitioner (see, Pet. A-1) and in no language of any corporation law the both can be defined as same issue.

It is indisputable that respondents stated so called "well-settled, applicable law that non-lawyers may not represent corporations and may not bring actions pro se in representative capacities" does not only violate the state and federal constitutions and statutory (28 USC 1654) mandates but also violate antitrust law of this nation. The federal and state constitutions prohibits legislature or judiciary from passing a private or local bill that would grant any exclusive privilege, immunity, license or franchise to the bar and/or its members to a

legal forum funded by public tax dollars (see, Pet. pp. 52, A-38).

An officer or employee of the United State has no discretion to commit illegal acts. Whether the act done by the official was judicial or not is to be determined by its character, and not by the character of the agent.

Therefore, this Court must exercise its appellate jurisdiction and revise and correct the proceedings in a cause already instituted and issue a prohibition and mandamus relief to this victim of judicial conspiracy, directing the performance of a duty, not depending on judicial discretion, but on particular acts of congress and the general principles of law.[3]

[3] Where an appellant charges government officials with constitutional or statutory violation, Mandamus is an appropriate remedy for equitable relief. 28 USC 1361; Mandamus (64).

The complaint was also filed individually as well.

The court in Traguth v. Zuck, 710 F.2d 90, 94 (1983) stated that:

> "Rule 6(b) does not, however, vest a court with discretion to impose a special condition on the responding party which violates a statutory rights Under 28 USC 1654, a party to a civil action in federal court has the right to appear pro se. The right to self-representation "is a right of high standing, not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." O'Reilly v. New York Times Co., 692 F.2d 863, 867 (2nd Cir,1982)

Courts are without power to dismiss actions before joinder of issue and during an interlocutory appeal.[4]

> "An interlocutory appeal, though limited in scope, is nevertheless an appeal so as to preclude the application of an

---

[4] Motion to dismiss for want of prosecution did not lie where issue had not been joined. Dailey v. Smiley, 1978, 65 A.D.2d 915, 410 N.Y.S.2d 468; Gorton v. Nelson, 1972, 39 A.D.2d 799, 332 N.Y.S.2d 241.

automatic dismissal rule for failure to bring a case to trial within the stated time when the effect of the interlocutory appeal is to stay further proceedings in the trial court." Allied Gas and Chemical Co., Inc. v. federal Mut.Ins. Co., 365 N.W.2d 26, clarifying Koss v. City of Cedar Rapids, 300 N.W.2d 153.

> "Also, a dismissal or nonsuit for want of prosecution may be set aside where there was no intentional or willful disregard of the directions of the court, and it does not appear that a further postponement of the controversy on its merits would result in prejudice or hardship to any of the parties." Polowick v. Meredity Construction Co., 332 N.E.2d 17, 29 Ill.App.3d 1092.

Respondents in conspiracy with the courts below with their full coercive power of government deliberately and willfully prevented petitioner from properly prosecuting her actions; and under those circumstances petitioner believes that she had prosecuted the appeal the only way she could by invoking common law doctrine of res ipsa loquitur. The evidence suggests mendacity on part of respondents and the

courts below, therefore, they have not destroyed the inference or the presumption and must submit to a summary judgment in favor of the party raising the doctrine (see Pet.pp. 15, 20, 22, 23, 33, 42).[5]

By its orders the appellate court meant to foreclose petitioner from following precisely the same avenue with regard to prosecution of her actions as given to all litigants in the federal courts.

Enacted by Congress to regulate the conduct of federal judges, 28 USC 455(a), and the grounds for recusal did exist, requiring the appellate court to recuse itself in proceedings in which its impartiality might

---

[5] Manifest disregard of applicable law by the court and a denial of due process, is a "manifest injustice" as a matter of law under rule providing that to correct manifest injustice the court must set aside the judgment and provide vindicative damages as remedy to the injured party to vindicate violation of constitutional rights.

reasonably be questioned, the court refused to recuse itself, thus the statute took effect and the panel had no authority to decide the appeal. The appellate court, sitting in judgment of its own cause, violated petitioner's 1st, 5th and 14th Amendment rights of access to the courts for a full and fair hearing, before an impartial tribunal, on the merits of her claims and her constitutional, statutory and common-law right to unbiased appellate review. The lower courts' "serious abuse of judicial power," should be shocking to the judicial conscience of this Court.

This Court stated in Ex parte Wall, 107 U.S. 265, 288 (1882) that:

> "the courts ought not to hesitate...to protect themselves from scandal and contempt, and the public from prejudice, by removing grossly improper persons from participation in the administration of the laws."

The courts' orders and voluminous

courts' files shows substantial evidence of special treatment and that petitioner was deliberately, in bad faith and in express violation of a rule of law as practiced in our adversarial system, improperly prevented from prosecuting these actions.[6]

The actions of the courts below, and respondents evidence a fundamental disrespect for a rule of law, judges and the bar must also abide by the law, whether they agree with the law or not. The privilege of the bar and the court is limited by the

---

[6] An action will not be dismissed where plaintiff is prevented by causes beyond his control from bringing the case to trial. An action will not be dismissed for failure to prosecute when prosection was or is impossible or impracticable, and this is so whether the impossibility exists because of total lack of jurisdiction or because proceeding to trial would be both impracticable and futile. California Michigan Land & Water Co. v. City of Pasadena, 70 S.Ct. 671,339 U.S. 937.

fundamental requirements of fairness. It is preposterous to suggest that judges and lawyers who broke state and federal laws and cannon of ethics, are somehow entitled to be treated differently from others for their failure to honor people's rights and uphold the laws of our nation.

The courts did not attempt to establish truth or lack of actual malice as a defense. The judges and lawyers intentionally falsifying or recklessly disregarding the truth is a clear intent to deprive petitioner of equal protection of the laws and under Rule 404(b) of the Federal Rules of Evidence, the judges judicial acts and lawyers' false statements are clearly admissible as proof of their class based discriminatory motives.[7]

[7] If the policies underlying the findings requirement are to be satisfied then the district court itself must document its reasoning. Neither the parties nor the reviewing court should be left to surmise how

In explaining restraints on government power, this Court in Hurtado v. People of California, 110 U.S. 516, 535-36, stated that:

> "Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case...thus excluding, as not due process of law, ...and acts directly transferring one man's estate to another,...partial and arbitrary exertions of power...enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude."

The courts below have promulgated an official policy to harass and deprive the public who access court pro se of impartial tribunals and fundamental justice; and is not only aimed at the undersigned but the whole

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the district court reached its final conclusion. It is not the function of the reviewing court to search the record and analyze the evidence in order to supply findings which the trial court failed to make. La Salle Extension University v. FTC, 627 F. 2d 481.

group with whom the victim is identified.

In Turpin v. Mailet, 619 F.2d 196 (2nd Cir.1980), this court interpreted the type of conduct on the part of municipal employees that is necessary to constitute an official policy within the meaning of Monell. The court found that if the municipality impliedly or tacitly authorized, approval or encouraged harassment of the plaintiff, it promulgated an official policy within the meaning of Monell at 201 (Monell v. New Your City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018 (1978).

This Court in Shelly v. Kraemer, 334 U.S. 1, 13, held that:

> "the action of the lower courts in granting unconstitutional relief would constitute state action against the party (deprived of the rights protected by the Constitution), and in violation of the provisions of the Fourteenth Amendment. The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws

to other individuals..." 334 U.S. at 22.

This Court in Screws v. United States, 325 U.S. 91, 104-105, declared that:

> "The Constitutional requirement that a criminal statute be definite serves a high function. It gives a person actin with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only "willful" acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids. He is under no necessity of guessing whether the statute applies to him. (see Connally v. General Construction Co., 269 U.S. 385) for he eitner knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal rights. See Gorin v. United States, 312 U.S. 19, 27-28.

Respondents in conspiracy with the courts below have knowingly and unconscionably dragged petitioner through the courts for four years, unfairly exacted her property, exacted enormous expense, causing humiliation, embarrassment, mental distress

and interfered with her normal life; and unjustly enriching themselves at petitioner's expense. Now they are seeking this Court to join the judicial conspiracy by providing no remedy to this victim of high level crime.

Petitioner has indisputably established that initiation of prosecution by the Attorney General is a preemptory and non-discretionary duty and petitioner entitlement is clear under 18 USC Sections 591/592 and 3332 (see, A-6, Pet. pp. A-49, A-52).

If not petitioner, who can be said to have a cause of action to insist that the Act be carried out in accordance with its terms? Petitioner is a victim of the alleged crime. Her is far more than a generalized grievance. The controversy is concrete. No separation of powers question or matter of prudential concern is involved. If an Attorney General ignores his duty to investigate and report to

Congress, Congress remains uninformed and cannot act. Thus, if the Act is enforceable at all it must be through those, like petitioner here, who have supplied specific information and pursue their application for an investigation. There is a well established rule that when the Constitution or a statute confers procedural rights on certain person, those persons have standing to insist that the government follow proper procedures in reaching a substantive decisions, even without any showing that following different procedures would have affected the final outcome.

For the courts to unjustly dispose a case is a fraud on the court and force a litigant to check the constitutionality of the court's action through multiple litigations, is an unlawful exaction because such exaction constitutes a deprivation of

property under due process. Therefore, it is improvident and lacking in dignity for respondents to even suggest to this Court to disregard constitutional and statutory violations, considering them moot because the courts below in order to avoid accountability for their "affirmative misconduct" have unjustly disposed the cases!!

The circumstances in the instant actions are so exceptional as to justify drastic and extraordinary remedies for extraordinary causes.

CONCLUSION

When controlling legal principles are repudiated by Circuit Court judges, when constitutional rights are trampled underfoot and when the system which has been contrived to resolve controversy itself becomes the controversy and ignore the very bands of society, it sets a pernicious example to the

insubordinate and dangerous elements of the body politic. It manifests a want of fidelity to the system of lawful government which they have sworn to uphold and preserve

Petitioner was compelled to seek this Court's appellate jurisdiction and the failure of this court to exercise its equitable powers under federal jurisdictiona statutes to grant the relief requested, will not only leave petitioner without a remedy t vindicate the deprivation of her constitutional rights but also put this Court's approval and encouragement behind such behaviors, in violation of the state an federal constitutions, only because the officers violating such rights were wearing the robes and they are officers of the court

For the reasons set forth above and in the interest of justice petitioner respectfully urges this Court that (i) all

relief requested be granted in its entirety or any other alternative Writ as the issues presented in the captioned actions must be decided immediately to prevent continued and further injury to petitioner, (ii) to protect petitioner from any significant prejudice or inconvenience by reason of her being impleaded, and (iii) to award just and proper treble damages, costs of all proceedings and reasonable attorneys fees.

Respectfully submitted,

Shahsultan Jaffer
Petitioner, Pro Se
400 East 54th Street
New York, N.Y. 10022
(212) 753-9202

October 8, 1990

APPENDIX

A-1

ABADY & JAFFE
342 Madison Avenue
New York, N.Y. 10173

December 23, 1986

RE: Retention of Abady & Jaffe to prosecute action against Maxitron Corp. et. al.

Dear Ms. Jaffer:

"This agreement shall set forth the terms of our representation of you regarding the above referenced action.

"We shall prosecute the action described above on your behalf. We shall be paid on a contingency basis, and no attorneys fees shall be paid to us as compensation unless you prevail in the Action. As compensation to us for attorneys fees, we shall receive one-third (33 and 1/3%) of the total recovery without condition or qualification. Additionally, you shall be responsible for all disbursements and expenses incurred by this law firm, including,but not limited to, investigator's fees, expert witness fees, filing fees, deposition an trial transcript costs, messenger and courier charges, travel expenses, postage an other disbursements and expenses incidental to our representation of you, which shall be payable as these are incurred, up to $10,000, the balance of disbursements, if any, payable out of the proceeds of the recovery.

"Any recovery or award paid shall be delivered to and made payable to this law firm. You hereby authorize us to deduct from the recovery, after deducting disbursements,

the amount of one-third (33 and 1/3% for our attorneys fees,a nd the balance shall be remitted to you.

"Your signature below will acknowledge your assent and consent to the terms and provisions of this agreement.

"We look forward to representing you in this action."

Very truly yours.
ABADY & JAFFE

Signed by: Richard Jaffe
A Member of the firm

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Case Number: 86 C 6014
Case Title: Shahsultan Jaffer v. Gilbert Granet, et. al.
Dated: October 23, 1987

Judge: Hon. Marvin E. Aspen

O R D E R

"Status hearing set for October 30, 1987 at 10:00 A.M. And if plaintiff is represented at that time by local counsel, the court will grant plaintiff's motion to vacate.

"Currently before the court is the motion of plaintiff Shahsultan Jaffer to vacate this court's dismissal of this case for want of prosecution on November 14, 1986, because she had failed to secure local counsel to represent her. At that status hearing it was represented to the court that plaintiff had found it difficult to retain local counsel until her New York counsel Mr. Weinstock, who was seriously ill in the hospital, had 'signed off' on the case. Counsel for defendants Granet, Jansen, W.S.I. Acquisition, Inc. and W.S.I. Investors, Inc. moved to dismiss the case and stated, 'I do not believe that Ms. Jaffer will be denied her day in court should she decide to refile in this court.' This court then indicated that this case would be dismissed for want of prosecution but added that '[c]ertainly within a reasonable period of time I will reinstate this case if plaintiff indicates that she is serious about pursuing it. Counsel for Maxitron, which currently opposes

this motion to vacate, was present at that hearing and did not object to the court's disposition of the case on those terms. Plaintiff noticed her motion to vacated on February 18, 1987, only three months after our dismissal, We do not find that three months is unreasonable; accordingly, a status hearing is set for October 30, 1987, at 10:00 a.m., and if plaintiff is represented at that time by local counsel, we will grant plaintiff's motion to vacate. It is so ordered."

FALSE STATEMENTS - 18 USC Section 1001 states:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, factious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

FEDERAL TORT CLAIM ACT - 28 USC 2679(b)(2) (1988):

> "Federal employees absolute immunity from personal liability for common law torts committed do not extend to so-called constitutional torts or to violations of federal statute that otherwise authorize suit against an individual. In those situations, the federal employee may be sued personally and held personally liable likewise, the 1988 amendment does not preclude an injured person from seeking injunctive or other appropriate equitable relief against either the Untied States or the federal employee."

The intention infliction of emotional distress has also been held actionable under

the Act.

If the underlying negligence or wrongful conduct, standing alone, caused injury and thus constituted an independent actionable cause, then the exclusions may not be applicable even though other breaches of duty or wrongful conduct by the government constituting one of the excluded torts may also have been present. In other words, even though recovery for one aspect of the government's conduct is barred by the exclusions, a claimant is not barred "from pursuing a distinct claim arising out of other aspects of the government's conduct. See Block v. Neal, 103 S.Ct. 1094.

ETHICS IN GOVERNMENT ACT, 28 USC 592(a):

> "Where a party invoking the Ethic in Government Act, claims that high officials of the United States Government authorized or negligently permitted the gross violation of civil rights which occurred and that those officials have conspired to conceal their involvement and asks the Attorney

General to investigate those charges and to report to the Special Prosecutors Division of court created under that Act, the Attorney General has statutory duties to do so."

The provision of the act does not permit the Attorney General to adopt a definition of "specific information" different from the standard set by Congress and no issue as to credibility is apparent in this case.

The Act creates procedural rights, and there must be redressed or the entire statutory scheme, designed to focus attention on claims of criminal misconduct in high places, is meaningless. To hold otherwise would be to declare that the Ethics in Government Act is merely a pious statement of pure political import designed to assuage the public's concern for abuses of trust that followed Watergate.